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Current Topics.

The Judicial Office.

THE Holdsworth Club in connection with the Faculty of Law in the University of Birmingham, which is so named in honour of the distinguished author of the exhaustive "History of English Law," has been fortunate in securing a succession of those eminent in the law to deliver an annual address to the members of the Club. We recall that of LORD ATKIN some years ago on Law and Civic Life, in which he spoke of one of the many advantages which the law possessed, namely, in publicly maintaining and enforcing a very high standard of integrity. We recall, likewise, the address of LORD MACMILLAN on Law and Language, in which, after referring to the countless problems set by the Legislature for solution by the judiciary, he added with a happy touch of humour that it was consoling to reflect that the increasing intervention of Parliament in the life of the people by means of imperfectly framed statutes would, at any rate, save many deserving lawyers from swelling the ranks of the unemployed. We recall, also, the more recent address by VISCOUNT HAILSHAM, in which with much learning and humour, he dilated on the multifarious duties which fall to the lot of the holder of the Great Seal. This year the club has been no less successful in the speaker at its annual dinner, namely, Sir WILFRID GREENE, the Master of the Rolls, who chose as his subject, "The Judicial Office," upon which, as we all know, he could speak with authority and consummate skill. As he truly said, the judicial office, as it exists in this country, is one of the main bulwarks of our liberties, in this respect being in striking contrast with that which prevails in what are known as the totalitarian nations of Europe, where, as he pointed out, the judge tends more and more to become an executive officer pronouncing decrees in consonance with the wishes of the government rather than a judge interpreting and applying a definite system of law. In his closing words the Master of the Rolls expressed the fervent hope that with us in this country the judicial office may never allow itself to be affected by views of this nature, but, as he also added, it is essential that we should be vigilant lest this insidious conception of the judicial office which has found favour elsewhere should find acceptance in this country—a hope which we feel sure all right-minded Englishmen will share.

London's Highways.

THE task with which Sir CHARLES BRESSEY was entrusted in December, 1934, with Sir EDWIN LUTYENS as consultant, has been accomplished by the publication on Monday of the Highway Development Survey, 1937 (Greater London). The terms of reference were: "To study and report upon the need for improved communications by road (including the improvement and remodelling of existing roads) in the area of Greater London and to prepare a Highway Development Plan for that area, incorporating so far as is practicable and desirable schemes already planned or projected." When it is recalled that the London Traffic Area is bounded approximately by a circle of twenty-five miles radius from Charing Cross, and embraces a population of some 9,500,000, that it has been necessary to examine some 250 proposals which have been made at various times for the improvement of traffic facilities within it, and that a close investigation has had to be made of road improvements embodied in town planning schemes and other programmes prepared by some 150 local authorities and regional committees, the magnitude of the task, quite apart from the formulation of recommendations, may be imagined. Moreover, Greater London's traffic problems cannot be isolated from those of the rest of the country and the recommendations necessarily include proposals for making good the lack of adequate communications between the centre of the Metropolis and the various arterial roads on the outskirts as well as for making provision for adequate communication between main routes converging from opposite points. The details of the proposals have been accorded full publicity in the press—we would mention in this connection the admirable supplement presented with *The Times* of 17th May—and may be readily seen by those interested in the report itself, which is published by H.M. Stationery Office, at 7s. 6d. net. The very elaborate proposals cannot be dealt with even in summary form here, but it may not be out of place to draw attention to the projected use of tunnels and bridges on a large scale in order to relieve existing conditions as well as to the suggested employment of a more complete system of orbital ways skirting the London area in order to reduce the traffic to more manageable proportions. New routes aggregating in length over 800 miles are recommended, and of these some 300 miles would be special parkways or motorways. How far the recommendations are likely to be put into effect during the near future remains to be seen, but it is interesting

to observe that the Minister of Transport has already made overtures, accompanied by offers of financial assistance, to local authorities concerned with regard to some of the more urgent proposals. Perfection is not claimed for any route recommended in the report, but it is urged that Londoners would be better advised to embark immediately upon useful schemes admittedly imperfect, rather than wait for the emergence of some faultless ideal which will have ceased to be attainable long before it has received approval. We think it will be generally agreed that the proposals form an admirable ground-work for prompt action.

The Coroners' Society and Road Safety.

SEVERAL interesting points were made in the course of evidence given before the House of Lords Select Committee on the Prevention of Road Accidents on behalf of the Coroners' Society last Tuesday. Both Mr. INGLEBY ODDIE, the coroner for Central London, and Sir SEYMOUR WILLIAMS, the coroner for South Gloucestershire, adverted to the reluctance of juries to return verdicts of manslaughter. This crime seems to be associated in juries' minds with some act of intentional violence, and it was suggested that the difficulty might be overcome by the creation of some new form of offence for the causing of death by negligence or dangerous driving. Some prominence has been given in these columns to the suggestion that special road traffic courts should be set up to deal in a comprehensive manner with the subject of road safety in its legislative, executive and judicial aspects. It is of interest to note in this connection that Sir SEYMOUR regarded such courts as unnecessary and undesirable. In the case of fatal accidents it was urged that the coroners' courts provided a method of inquiry that was at once satisfactory, cheap and speedy, while specially appointed tribunals would be a waste of public money and would tend towards bureaucracy. Unlike most witnesses before the committee who have been confronted with an increasing, or at best stationary, toll of road accidents, Mr. ODDIE was in the fortunate position of dealing with figures that show a substantial improvement in the course of years. In 1930 there were 136 fatal accidents occurring within the area of his jurisdiction; in 1937 there were 136, while in the first three months of the present year there were only nine. He attributed this improvement to publicity, a reduction in speed, and to street improvements, including the provision of pedestrian crossings, traffic lights, and more refuges, but he thought that the speed limit of thirty miles an hour was too high for London, and advocated a reduction of the limit to twenty miles an hour, together with a general prohibition of overtaking by motor cars. With regard to the pedestrian, he thought that the most common cause of street fatalities was inattention, or stepping off the pavement without looking, and suggested that the remedy was continued publicity and education, and the provision of railings at dangerous points.

Blood Tests and Affiliation Proceedings.

SOME time ago we made reference to the conclusions of medical science with reference to blood groups and to the use of these conclusions in courts of law, particularly in connection with affiliation proceedings. A recent case before county magistrates affords an interesting example of the practical application of what are, we understand, universally accepted scientific facts. In the case in question the blood group of the mother was AMN, that of the infant AN, and that of the alleged father OM. According to evidence tendered by Dr. ROCHE LYNCH, senior official analyst to the Home Office, the children of parents whose groups are MN or M can only be M or MN, and could not be N. With the mother MN, the father must have been MN or N. The factors A and O had no significance in this instance, and, according to Dr. LYNCH, it was therefore absolutely established that the alleged father could not be the father of the child. The solicitor who appeared for the mother said that he was quite prepared to accept the doctor's statement and an application for an affiliation order was dismissed. The case provides a striking example of the utility of these tests, but the yielding of useful results is clearly conditional upon the alleged and the real father belonging to different blood groups, and this fact necessarily precludes the application of such tests being regarded as a universal solvent in such cases.

The Housing (Financial Provisions) Act, 1938.

THE late Minister of Health recently caused to be sent to the county councils a circular and a memorandum concerning the Housing (Financial Provisions) Act, 1938. The provisions of the Act have been dealt with at some length in these columns and considerations of space preclude further treatment at the moment. Readers desiring more detailed information on the matter will find it readily available in the memorandum which is published by H.M. Stationery Office, price 4d. net. The circular (No. 1704) explains that the new Act makes no alterations in the general housing law as affecting either county councils or other local authorities. Its main effect is to prescribe the Exchequer and rate contributions payable for the different purposes of the Housing Acts of 1930 and 1935 in respect of houses completed between the beginning of the year 1939 and 30th September, 1942. With regard to houses built for the agricultural population, however, the Act introduces special rates of Exchequer subsidy, not only in connection with the purposes of slum clearance and the abatement of overcrowding, but also for general needs. In certain cases (see s. 1 (3) and (4), s. 2 (1), proviso), the Minister is required to consult with the county council before assenting to applications by local authorities involving the county council in liability. No special action on the part of the county councils is required by the Act until such applications are made, but the Minister expresses himself as confident that he can rely on the co-operation of the county councils in securing that proper advantage is taken by the authorities of county districts of the facilities afforded by the Act.

Local Authorities and Capital Expenditure.

THE attention of readers may be drawn to an important circular (No. 1687) which has recently been sent by the Ministry of Health to local authorities on the subject of capital expenditure, though it will only be possible to refer to some of the more interesting points in briefest outline. Local authorities are reminded that the Minister has on previous occasions urged them to make annually a survey of their probable capital commitments for at least five years ahead. Only by such means can the authorities take a reasonably long view of their future requirements; while under such a system the programme of capital works can be arranged in an order of priority which, though necessarily conditioned by considerations of their relative urgency, will have regard to present and anticipated conditions in respect of costs and the supply of labour so that the programme can be carried out with the greatest possible efficiency and economy. The desire is expressed that programmes be prepared for the period of five years from 1st April, 1938, covering the whole of the capital works in contemplation, including those, such as housing and roads, for which provisional programmes may be in existence. It is suggested that the several committees of the local authorities should be invited to formulate their proposals with regard to the matters under their purview and that these proposals should be examined by a co-ordinating committee and embodied in a provisional programme to be approved by the authority. It is appreciated that a considerable measure of elasticity will be necessary and that the execution of a local authority's programme should be capable of acceleration or retardation as circumstances require. With regard to preliminary work, the circular indicates that upon being satisfied that a scheme

is one which may ultimately be approved, the Minister will be prepared to sanction loans for the immediate acquisition of land in readiness for the execution of the proposed works at a later date. The contents of the circular, thus briefly sketched, have, it is said, been discussed with other departments concerned and is issued with their concurrence.

Public Health: Aircraft Regulations, 1938.

SECTION 143 of the Public Health Act, 1936, which is concerned with the prevention and treatment of infectious diseases, empowers the Minister of Health to make regulations, *inter alia*, for preventing danger to public health from vessels or aircraft arriving at any public place, and for preventing the spread of infection by means of any vessel or aircraft leaving any place, so far as may be necessary or expedient for the purpose of carrying out any treaty, convention, arrangement or engagement with any other country. Before making regulations regarding arriving aircraft, the Minister is required to consult the Home Secretary. In exercise of these powers the Minister has made the Public Health (Aircraft) Regulations, 1938 (S.R. & O., 1938, No. 299). In the course of a circular (No. 1677) which has been sent to county councils, local authorities for public health purposes, and port sanitary authorities, it is explained that the new regulations are designed to prevent the introduction of infectious diseases into this country through the medium of air-borne traffic, and that they resemble in their general scope the Port Sanitary Regulations, 1933, which were made to secure a similar object in regard to water-borne traffic. It is also stated that the regulations have been made in conformity with the International Sanitary Convention for Aerial Navigation, signed at The Hague, on 12th April, 1933, and ratified by the Government of the United Kingdom on 15th September, 1934. They therefore include provisions relating to sanitary measures to be taken in certain circumstances in regard to outgoing as well as to incoming aircraft. The regulations are published by H.M. Stationery Office, price 5d. net, and come into operation on 1st July next.

Central Criminal Court: May Session.

THREE charges of murder and one of attempted murder figured in the lists for the May Session of the Central Criminal Court which opened on Tuesday. At the beginning of the week there was a total of sixty-one persons awaiting trial or sentence, so that in matter of numbers the calendar is a comparatively light one. The lists also included three charges of wounding or causing grievous bodily harm, three of robbery with violence, five of forgery, six each of bigamy and fraudulent conversion, and two long firm fraud accusations. Cases in the High Court Judge's List during the present session are being dealt with by HUMPHREYS, J.

Recent Decisions.

IN *Aerial Advertising Co.* v. *Batchelors Peas, Ltd.* (*The Times*, 17th May), ATKINSON, J., gave judgment for the plaintiffs for work and labour done under a contract to advertise the defendants' goods by flying an aeroplane towing a trailer; but, in view of the fact that the machine was flown during the two minutes' silence on Armistice Day, held that the defendants were entitled to a declaration that they were no longer bound by the contract and awarded £300 on their counterclaim for damages.

In *The Theems* (*The Times*, 17th May), where the plaintiffs' ship came into collision with the defendants' trawler, with the result that the latter sank and seven of her crew were drowned and the plaintiffs settled actions on the basis that they should pay the claims arising, BUCKNILL, J., pronounced for a declaration that the plaintiffs should not be liable in respect of the claims for loss of life and personal injury, either alone or together with loss of or damage to property, beyond the aggregate amount of £15 a ton of the registered tonnage of the plaintiffs' ship, and that they should not be liable in respect of the claims for loss or damage to property beyond the aggregate amount of £8 a ton.

In *Haynes* v. *Turton: Haynes* v. *Lear* (*The Times*, 13th May), a Divisional Court (BRANSON, HUMPHREYS and DU PARCQ, JJ.) intimated that it was not prepared to hold that there was no evidence on which justices could find that where hop-pickers had taken their children with them to the hop fields there was "reasonable excuse" for the non-attendance of the children at school within the meaning of bye-laws made under the Education Act, 1921. Appeals from the justices' decisions were accordingly dismissed.

In *Setton and Others* v. *Setton* (*The Times*, 13th May), LANGTON, J., held that a testator's nationality was Egyptian and not British, and accordingly that probate of a will and one codicil granted by the English Probate Court to the brother of the deceased should be revoked and that letters of administration of the will and two codicils should be granted to the lawful attorneys of the plaintiffs, the testator's widow and children. The brother was wrong in obtaining a grant without informing the heirs and was ordered to pay the costs.

In *Lambert* v. *F. W. Woolworth & Co., Ltd.* (p. 414 of this issue), the Court of Appeal (SLESSER and MACKINNON, L.JJ., GREER, L.J., dissenting) dismissed the plaintiffs' appeal from a decision of SIMONDS, J., who held that proposed alterations to premises demised by the plaintiffs to the defendants were "improvements" within the Landlord and Tenant Act, 1927, and, reversing a finding of SIMONDS, J., held that the plaintiffs had unreasonably withheld their consent to the proposed alterations.

In *London County Council* v. *Davis* (*The Times*, 18th May), a Divisional Court (BRANSON, HUMPHREYS and DU PARCQ, JJ.) upheld a decision of a Metropolitan magistrate to the effect that newly baked bread came within the description of "newly cooked provisions" in s. 1, cl. (*b*), of the Shops (Hours of Closing) Act, 1928, and that, consequently, the respondent had not committed any offence under the Shops Act, 1912, by serving such bread after 8 p.m.

In *Smith* v. *Cornhill Insurance Co., Ltd.* (*The Times*, 18th May), ATKINSON, J., held that the executrix of an assured person under a motor car policy was entitled to £1,000 payable in the event of the death of the assured, provided that death occurred within six weeks of the date of the accident "and as the result solely of bodily injury caused by violent accidental external and visible means sustained by the insured whilst riding in mounting into or dismounting from the insured car." The learned judge concluded from the evidence that the deceased while wandering in a semi-conscious state as the result of an accident stepped into water and that the shock caused her death.

In *Z Steamship Co., Ltd.* v. *Amtorg New York* (*The Times*, 18th May), where a clause in a charterparty provided that the shipowners should have a lien on the cargo for freight and that the charterers should also remain responsible for freight but only to such extent as the owners had been unable to obtain payment by exercising the lien (the freight being payable by the receivers of the cargo), GODDARD, J., held that, since the owners had parted with the goods to the receivers without exercising their lien, a claim by the owners against the charterers in respect of alleged overcharged dispatch money failed.

According to a note in *The Times*, 13th May, a Divisional Court (BRANSON, HUMPHREYS and DU PARCQ, JJ.) recently negatived the proposition that the use of the term "solicitor" by a person on the Roll could not be an infringement of the Solicitors Act, 1932, and remitted to a Metropolitan magistrate a case where the defendant who had been suspended was charged with wilfully using a title or description implying that he was qualified to act as a solicitor on the ground that the question was of mixed law and fact.

Criminal Law and Practice.

PROOF OF CONVICTION.

WHEN is a conviction deemed to have been "proved" within s. 7 of the Prevention of Crimes Act, 1871? This interesting point was recently discussed in *R.* v. *Wilsea*, at Westham Borough Quarter Sessions (*The Times*, 17th April). The section provides that where any person is convicted on indictment of a crime and a previous conviction of crime is proved against him, he shall, at any time within seven years immediately after the expiration of the sentence passed on him for the last of such crimes be guilty of an offence against the Act, *inter alia*, if he is found in any place, whether public or private, under such circumstances as to satisfy the court before whom he is brought that he was about to commit or to aid in the commission of any offence. The previous conviction in the present case had been proved only by evidence that the prisoner had agreed from the dock that he had been previously convicted.

It was contended on the prisoner's behalf that the conviction was not properly proved and the Recorder accepted that contention and discharged the prisoner, adding that it might be useful to get a definition of the word "proved." In fact, although the Act provides no such definition, or, in other words, no obligatory method of proving a conviction, an optional method of proof is supplied in s. 18 "by producing a record or extract of such conviction, and by giving proof of the identity of the person against whom the conviction is sought to be proved with the person appearing in the record or extract of conviction to have been convicted." A summary conviction is proved by production of a copy of the certificate signed by a justice of the peace or the proper officer of the court or a copy of the minute of the conviction entered in the register of the court and purporting to be signed by the clerk of the court (Summary Jurisdiction Act, 1879 s. 22 (1), and Criminal Justice Administration Act, 1914, s. 28 (1)). It is expressly provided, however, that the mode of proving a previous conviction authorised by this section shall be in addition to and not in exclusion of any other authorised mode of proving such conviction.

This is the most frequent method of proof, but there is also the method set out in s. 13 of the Evidence Act, 1857, which provides that "whenever in any proceeding whatever it may be necessary to prove the trial and conviction or acquittal of any person charged with an indictable offence it shall not be necessary to produce the record of the conviction or acquittal of such person or a copy thereof, but it shall be sufficient that it be certified or purport to be certified under the hand of the clerk of the court or other officer having the custody of the records of the court where such conviction or acquittal took place, or by the deputy of such clerk or other officer, that the paper produced is a copy of the record of the indictment, trial, conviction and judgment or acquittal, as the case may be, omitting the formal parts thereof."

A further method is provided by s. 6 of the Criminal Procedure Act, 1865. This is applicable where it is necessary to prove a conviction in order to discredit a witness who has denied or does not admit a conviction or refuses to answer when questioned about it. In that case a certificate containing the substance and effect of the indictment and conviction signed by the clerk of the court, his deputy or the officer having custody of the records is sufficient evidence of the conviction, without proof of the signature or official character of the person appearing to have signed it. A similar method is provided in cases of perjury under s. 14 of the Perjury Act, 1911.

These are, it will be noted, optional methods of proving a conviction, but at common law the strictest proof of a conviction is required. A plea of *autrefois convict*, it was held in *R.* v. *Bowman* (1833), 6 C. & P. 101, can only be proved by the record, and in *R.* v. *Bourdon* (1847), 2 Cox C.C. 169, it was held that the written calendar signed by the clerk of assize, being the authority of a gaoler to detain a prisoner, was not admissible as evidence that the prisoner was in lawful custody, but that the legal evidence was the record of the conviction. See also *R.* v. *Ackroyd and Jagger* (1843), 1 Cox C.C. 46 and *R.* v. *Stonnell*, 1 Cox C.C. 142.

A modern case in which a decision was given as to proof of convictions generally is *Mash* v. *Darley* [1914] 3 K.B. 1226. That was an affiliation case in which the complainant relied for corroboration of her story on an alleged conviction of the appellant for having had unlawful carnal knowledge of her. It was held (*inter alia*) that the oral evidence of a superintendent of police who was present when she was convicted was not proof of the conviction. Buckley, L.J., said: "I do not myself see that it could be said that the conviction was proved," and added that there was no production of the record and no proceedings under s. 13 of Lord Brougham's Act of 1857. Kennedy, L.J., held that the evidence of the superintendent as to the alleged conviction was not admissible as there was express statutory provision as to the conditions under which a conviction could be proved. Phillimore, L.J., entirely agreed that "for any purposes for which a conviction is relied on as a conviction of crime . . . you must have strict documentary evidence," but doubted whether there was not sufficient evidence of it in the present case.

Even if there were not statutory or common law rules concerning proof of convictions it would be consistent with the spirit and letter of the English law that where previous convictions are admissible in evidence against a person, whether in civil or criminal proceedings, they should be proved with the greatest of strictness. In *R.* v. *Wilsea* the section invoked was one which clearly limits the liberty of the subject, and the recorder was therefore right in requiring strict proof of the offence charged.

Death Duties and the Budget.

THE Budget proposals of this year, so far as death duties are concerned, are not of a drastic character, but are directed to stopping up a few of the more obvious loop-holes. Very briefly, the proposals are as follows:—

(1) The first concerns unadministered estates, as to which the Court of Appeal in *Corbett* v. *Commissioners of Inland Revenue* [1938] 1 K.B. 567; 82 SOL. J. 34, recently affirmed the principle of *Dr. Barnardo's Homes* v. *Special Commissioners of Income Tax* [1921] 2 A.C. 1, that until the residue was ascertained in due course of administration, beneficiaries had no title to that residue, and that the existence of the rule in *Allhusen* v. *Whittell* (1867), L.R. 4 Eq. 295, did not alter the fundamental fact that during the period of administration the income was the income of the executors and of no one else.

If the death of a life-tenant of a residuary estate occurred during the process of administration, it might be urged in consequence of this decision that as there was no residue at the time of the death there was therefore no passing of property to which estate duty could attach. The clause of the Finance Bill is to provide that the property representing the residue actually passes or is to be deemed to pass on the death of a beneficiary who dies before the process of administration is complete; and this provision is to be retrospective.

(2) The second is directed to—

(*a*) Property transferred to family companies to which ss. 34 and 35 of the Finance Act, 1930, apply.

Under s. 34, if a person transferred assets to a family company and received a benefit equivalent to more than 50 per cent. of the average income of the company, a notional sum representing a similar percentage of the total assets of

the company becomes chargeable with estate duty on the death of the transferor. Under s. 35, where settled property was transferred to such a company by the life-tenant and reversioner, the property itself becomes liable to estate duty on the death of the life-tenant, unless, in effect, his interest in the property or the assets of the company ceased more than three years before his death. Both the notional sum under s. 34 and the property itself under s. 35 were expressly declared not subject to aggregation, and in each case can be treated as an estate by itself. The result was that although the intentions of these sections was to discourage transfers of this kind, the benefit of non-aggregation made them worth while, as the property could be divided into several units, each of which, if transferred to a separate company, would be entitled to the benefit of non-aggregation. It is now to be provided that the property deemed to pass under either of these sections shall no longer be an estate by itself but be aggregated with the other property passing on the death.

(*b*) In arriving at the sum chargeable with duty under s. 34, allowance is to be made against "the value of the total assets of the company" for the *par or redemption value*, whichever is greater, of any debentures, debenture stock and preference shares of the company (Finance Act, 1930, s. 38). This is so, even though owing to the financial position of the company or to the low rate of interest the security carried, the security was not worth par. Thus if, for example, £1 preference shares only carried a fixed rate of interest of £1 per cent. instead of the usual five per cent., six per cent. or seven per cent., or owing to the poor trading record of the company were only worth ten shillings, par value could still be deducted for the purpose of s. 34. This anomaly is to be abolished, and deduction is to be the *principal value* of any debenture, debenture stock or preference shares.

This provision will also apply where shares in a company (not being preference shares) pass on a death and fall to be valued by reference to "the value of the total assets of the company," instead of at their principal value under s. 7 (5) of the Finance Act, 1894. It may be remembered that this substituted method of valuation was introduced for unquoted shares (not preference) by s. 37 of the Finance Act, 1930, where s. 34 applied or where the control of the company was immediately before the death in the hands of the deceased.

(3) The third proposal is to limit the operation of s. 5 (3) of the Finance Act, 1894, in certain cases where the interest of the deceased in settled property fails or determines by reason of his death before it becomes an interest in possession.

It was suggested by an article in a well-known law journal that this sub-section might operate to exempt certain voluntary dispositions *inter vivos*. Thus, if in making a voluntary disposition by way of settlement, A provided for a reversionary life interest for himself and died within three years, the property might, it was suggested, escape duty by virtue of s. 5 (3), because A's interest in the settled property had failed or determined by his death before it became an interest in possession. It is evident that s. 5 (3) was not intended to have any application where estate duty becomes chargeable under the gift *inter vivos* provisions, but, in order to put the matter beyond doubt, a declaratory provision is to be introduced into the Finance Bill.

THE HARDWICKE SOCIETY.

A meeting of the Society was held on Friday, 13th May, in the Middle Temple Common Room, the President, Mr. G. E. Llewellyn Thomas, in the chair. Mr. G. F. T. Wagstaff moved: "That this House deplores the increasing Government control of industry." Mr. Willard Sexton opposed. There also spoke Mr. C. O. Cummins, Mr. P. A. Picarda, Mr. Lewis Sturge (Hon. Treasurer), Mr. J. E. Harper, Mr. A. C. Douglas, Mr. Granville Sharp (ex-President), Mr. M. N. Cochrane, Mr. L. S. Weinstock, Mr. Norman Edwards (Hon. Secretary). The hon. mover having replied, the House divided, and the motion was lost by two votes.

Company Law and Practice.

Declaration of Dividend and its Effect.

Most articles of association provide for the declaration of dividends by the company in general meeting, and in most cases no enforceable claim to a dividend arises until the declaration has been made. This is so not only in the case of ordinary shareholders, but also as regards preference shareholders whose shares confer the right to a fixed preferential dividend: see *Bond* v. *Barrow Hæmatite Steel Co.* [1902] 1 Ch. 353, at p. 362, where Farwell, J., said this: "It is argued that the provisions as to the declaration of a dividend do not apply to shares on which a fixed preferential dividend is payable. In my opinion this is not so. The necessity for the declaration of a dividend as a condition precedent to an action to recover is stated in general terms in "Lindley on Companies," 5th ed., p. 437, and, where the reserve fund article applies, it is obvious that such a declaration is essential, for the shareholder has no right to payment until the corporate body has determined that the money can properly be paid away. It is urged that this puts the preference shareholders at the mercy of the company, but the preference shareholders came in on these terms, and this argument does not carry much weight in an action such as this, where *bonâ fides* is conceded. The opposite conclusion might enable the preference shareholders to ruin the company, and would certainly lead to great inconvenience in enabling them to compel the payment out of the last penny without carrying forward any balance. Granted that it is a hardship to go without dividends for a time, this hardship presses more heavily on the ordinary shareholders, who have to wait until the preference shareholders have received all arrears before they can get anything."

Occasionally, however, one finds that the memorandum or articles of a company are framed in such a way that the right to a dividend is in effect independent of any declaration: as where the relevant provisions are mandatory and direct the division of the profits among the shareholders before any sum is carried to reserve: see, for example, *Evling* v. *Israel & Oppenheimer Ltd.* [1918] 1 Ch. 101; *Paterson* v. *R. Paterson and Sons*, 54 S.L.R. 19. Even in such cases it would seem doubtful whether in the absence of a declaration of dividend a shareholder can sue for the payment of the amount due, though he can claim a declaration as to his rights and an account on that footing.

The effect of a declaration of a dividend is to give rise to a debt due from the company to the holders of the shares at the date of the declaration (*Re Kidner* [1929] 2 Ch. 121); the debt becomes payable on the date on which the dividend is made payable and from that date the Statute of Limitations begins to run in favour of the company. For this purpose, the relationship between the company and its shareholders is no more than that of debtor-creditor; the company does not by virtue of the declaration become a trustee of the dividend for the shareholders, nor is it constituted such a trustee by entering the liability in its books, e.g., in an unclaimed dividends account: see *In re Severn & Wye and Severn Bridge Railway Company* [1896] 1 Ch. 559. It seems, however, that if the company were to set apart a special part of its assets to represent the dividend the relationship of trustee and *cestui que trust* might then arise so as to take the case out of the Statute of Limitations. But, in the ordinary case, the claim of the shareholders to payment of a dividend which has been declared will be barred by lapse of time, the appropriate period being, it seems, twenty years: see *In re Artisans' Land and Mortgage Corporation* [1904] 1 Ch. 796. In this case Byrne, J., followed decisions in the Irish Courts in holding that the debt created by the declaration is a specialty debt; on the ground, apparently, that the contract is constituted by the share certificate, which is under the seal of the company, coupled with the articles of association.

Inasmuch as the effect of a declaration of dividend is to give rise to a debt payable to the individual shareholders, it follows, I think, that no subsequent resolution of the company can of itself affect the obligation of the company to pay or the right of the shareholder to enforce payment of that debt. If, for example, it were desired to revoke the declaration or reduce the amount of a dividend already declared, a resolution of the company in general meeting would not bind the individual shareholders, for if the original resolution declaring the dividend resulted in a debt becoming due to each shareholder, the obligation of the company to pay that debt will continue until it is effectually released by the shareholder. He cannot for this purpose be bound by a resolution of the company; or, to put the matter in another way, the company cannot by its own resolution release itself from an enforceable obligation. On the other hand, where, as is usually the case, the articles permit the directors to pay interim dividends, a resolution of the board that an interim dividend be paid can, it would seem, be rescinded by the board: see *Lagunas Nitrate Company Ltd.* v. *Schroeder & Co.*, 85 L.T. 22. Under an article in this form, the shareholder, it appears, has no claim to an interim dividend until it is actually paid—the mere resolution of the directors to pay such a dividend does not create a debt due from the company to its shareholders; and, this being so, the directors can review their decision to pay an interim dividend without infringing any legal rights.

The necessity for a declaration of dividend by the company in general meeting before anything can become due to a shareholder in respect of dividend has this result: If the memorandum or articles of association provide that in a winding up the preference shareholders shall be entitled to be paid all arrears of dividend *due* on their shares at the date of winding up, there will be no dividends due, and therefore no arrears payable to the preference shareholders unless dividends have in fact been declared and not paid: see *In re Roberts & Cooper Limited* [1929] 1 Ch. 383. The ordinary form of article providing for the payment of arrears of dividend in a winding up does not use the word "due," and indeed the position is often made quite clear by expressing the right to extend to all arrears and accruals of dividend "whether declared or not": in these cases the right of the preferential shareholders to their arrears is not affected by the absence of a formal declaration of dividend. It will be remembered, however, that although a declaration of dividend results in a debt becoming due to the shareholders, it is not a debt which in the liquidation of the company will rank with the company's ordinary debts; for by s. 157 (1) (*g*) of the Companies Act, 1929, in a winding up, "a sum due to any member of the company, in his character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves."

I have said that the declaration of a dividend creates a debt due from the company to its shareholders; but the statement must I think be read with the implied qualification, "provided that the dividend is properly payable." Suppose that by mistake a dividend is declared when a company has no profits or other fund available for distribution as dividend, so that if in fact it were paid it would be paid out of capital. Such a payment would of course be illegal; and no shareholder could, I think, enforce the payment by saying in effect: "True the company cannot pay dividends out of capital; but as a result of this declaration the company is indebted to me in the sum of £*x* for which I can sue as a debt, and a debt of the company is payable irrespective of profits." If this argument were sound a company could be compelled to pay a dividend out of capital provided the necessary declaration had been made. This cannot be so; a declaration of dividend can only give rise to a debt if the declaration were properly made, i.e., if profits were available for the payment of the dividend; hence the qualification which I suggest must be read into the general statement. If at the time of the declaration profits were available, and before the dividend was actually paid the company suffered losses which wiped out the profits, I suppose a shareholder might be entitled to require payment, for, the declaration having been properly made, he is a creditor of the company for the amount and has done nothing to release his claim.

A Conveyancer's Diary.

The Rule against Double Portions.

THE doctrine of ademption of legacies by portions based upon the equitable rule against double portions, is one which I have always thought worked in many cases inequitably, and, although founded upon the presumed intention of a father to his children, more often than not actually defeated that intention.

The doctrine has its foundation in the assumption that in bequeathing a legacy to a child a father intends the legacy to be a "portion" and that every father must be presumed, in the absence of contrary intention being shown, to intend to benefit his children equally. The result is that any subsequent benefit conferred upon a child to whom a legacy has been bequeathed must be taken as being an advance in part or in the whole (as the case may be) of the legacy.

The doctrine is an old one established before the Wills Act provided that a will should speak from the death of the testator.

At one time it seems (not unnaturally) to have been thought that the doctrine did not apply to shares in residue given to children. It seems to me that there was reason for that doubt. Presumably, where a father gives a share in residue to a child his intention is that the child shall take the share or proportion named in whatever residue the father may leave at his death, after providing for testamentary expenses, debts and legacies. The question was settled to the contrary, however, in *Montefiore* v. *Guedalla* (1859), 1 De G. F & J. 93. In that case Lord Campbell, L.C., said: "It has been said that neither can there be an ademption where a testamentary gift, is of residue of the testator's personal property, nor can such testamentary gift operate as a satisfaction of a covenant to make a provision to a given amount for a child. This position rests on no principle and if strictly acted upon would produce great injustice. The doctrine of ademption has been established for the purpose of carrying into effect the intention of fathers of families in providing for their children and of preventing particular children from obtaining double portions contrary to such intention."

Notwithstanding that authoritative pronouncement, I suggest that the doctrine frequently defeats the intention of a father and is applied in order to impose, not what the father's intention was, but what the court considers it should have been.

As illustrating this I may refer to the judgment of Bowen, L.J., in *Montague* v. *Earl of Sandwich* (1886), 32 Ch. D. 524, in which the learned Lord Justice said: "Feeling no confidence that, in applying this doctrine of double portions in this particular case, we are giving effect to the real intention of the testator, feeling no confidence at all myself that this presumption when applied in this particular case, may not be absolutely leading us away from the true wish of the testator, yet it seems to me that it would be wrong to break through precedent, and I record my judgment accordingly in favour of the appeal as a sacrifice made upon the altar of authority."

In a recent case, *Re Vaux: Nicholson* v. *Vaux* (*No.* 2), 82 Sol. J. 322, the question arose whether the rule against double portions could be applied in a case of a partial intestacy, and, if so, whether it should be applied to the ademption of legacies so as to benefit the testator's widow or any person other than a child of the testator or a person to whom he was *in loco parentis*.

Upon that question I must refer to the observations of Mellish, L.J., in *Meinertzhagen* v. *Walters* (1872), 7 Ch. 607. In his judgment in that case, Mellish, L.J., laid down the principles to be applied as follows: "Now in the ordinary case of a legacy when a legacy has been left to a child and then a gift has been made which amounts to an ademption of that legacy, there certainly appears to be no possible way of holding it to be an ademption so as to carry out the general rule against double portions except by holding that whoever has the residue benefits by it; because by the necessity of the case the persons who have the residue must benefit by the fact of the previous legacy not being paid from any cause whatever. But when we come to apply the rule as to a share in residue it appears to me that it is perfectly easy to carry out what I consider the real principle of the rule, namely equality between the children without allowing the stranger to take any benefit." The learned lord justice seems, therefore, to have thought that the rule might apply to benefit a stranger in the case of a pecuniary legacy but not in the case of a legacy of a share in residue.

In *Re Heather* [1896] 2 Ch. 230, the view was expressed that in no case (not even in a case of ademption of a pecuniary legacy) could the doctrine be applied so as to benefit a stranger. In that case a testator bequeathed a legacy to an adopted child to whom he stood *in loco parentis* and divided his residue between that child and a stranger. He made a subsequent advance to the child. It was held that even if the advance had been a portion, which on the evidence was not the case, the doctrine of ademption by subsequent portion would not have been applied in favour of a stranger against a child taking a share of residue as well as a legacy and that neither the legacy nor the share of residue would have been adeemed.

This does not seem to altogether agree with what was said in *Meinertzhagen* v. *Walters*. But, of course, *Re Heather* was a case where the child took a share in residue as well as a legacy.

In *Re Vaux*, a testator having given legacies to his daughters settled certain shares upon his sons and daughters, and it was held that the ultimate trusts of the residue were void as offending the rule against perpetuities and to that extent there was an intestacy. It was also held that the provisions made for the daughters were portions and must be deemed to have been made *pro tanto* in satisfaction of the legacies.

Simonds, J., also held that (1) the rule against double portions applied, although it was a case of partial intestacy, and (2) it must be applied so as to benefit children only and not the widow. His lordship seems to have gone further than the decision in *Re Heather*, and said that he could not agree with certain of the observations in *Meinertzhagen* v. *Walters* as to residue being increased by the failure of legacies adeemed in consequence of the rule. The learned judge therefore made a declaration that for the purposes of ascertaining the ultimate residue of the estate and the shares of the children therein, but not for the purpose of ascertaining the residue and the share of the widow therein, the daughters' legacies must be treated as adeemed to the extent of the value of shares settled on them.

In his judgment, Simonds, J., is reported to have said that in the case of the ademption of a legacy the rule was not to be applied for the benefit of a stranger, and cited *Re Heather* as an authority for that proposition. But, as I have pointed out, that case hardly went so far: all that was decided there was that where a legacy was given to a child and the residue between that child and a stranger there would be no ademption, for that would benefit the stranger. The case does not seem to be an authority where there is a legacy to a child and the whole residue is given to strangers. It seems, however, that the *ratio decidendi* of that case would apply where the whole of the residue is given to strangers. If so, it is a considerable inroad upon the rule, which is all to the good.

Landlord and Tenant Notebook.

Hire-Purchase and Reputed Ownership.

The decision in *Times Furnishing Co.* v. *Hutchings* [1938] 1 K.B. 775, discloses the existence of a new difficulty facing owners of goods the subject of hire-purchase agreements who may have occasion to assert claims under the Law of Distress Amendment Act, 1908.

That statute confers a qualified privilege on third parties, but by s. 4 certain classes of goods are excepted from that privilege. For present purposes it is sufficient to observe that these classes include (1) goods comprised in any hire-purchase agreement, and (2) goods in the possession, order or disposition of the tenant by the consent and permission of the true owner under such circumstances that the tenant is the reputed owner thereof.

In *Times Furnishing Co.* v. *Hutchings* the facts were that the plaintiffs hired out furniture to the defendant's tenant under a hire-purchase agreement of which two clauses became relevant. The one, cl. 7 (*b*), entitled the company absolutely to determine the agreement by written notice in the event of any breach, the effect to be that the hirer should no longer be in possession with their consent, and that neither party should thereafter have any rights under the agreement. The other, cl. 8, provided that the agreement and the consent to possession should automatically determine and come to an end if the hirer's landlord threatened or took any step to levy a distress for rent on the furniture.

The tenant being in arrear with rent, the defendant signed a distress warrant which was executed the day following, and a week later the plaintiffs served the statutory notice claiming exemption.

The first question in the action for illegal distress which followed was, of course, whether the furniture was or was not "goods comprised in a hire-purchase agreement." The history of the self-determining agreement is a short but interesting one: briefly, after *Hackney Furnishing Co.* v. *Watts* [1912] 3 K.B. 225, and *Jay's Furnishing Co.* v. *Brand & Co.* [1915] 1 K.B. 458, C.A., had shown that an agreement automatically determining the bailment but providing a right to resume possession and/or to enter for that purpose in that event left the goods still "comprised in a hire-purchase agreement,"owners took a hint dropped by Phillimore, L.J., in the latter case and, using "apt words," devised the instrument which in *Smart Brothers Ltd.* v. *Holt* [1929] 2 K.B. 303, was demonstrated to "accomplish that which they sought to do." A clause which entitled the owners to determine the agreement by notice, and provided that thereafter neither party should have any rights under it (and thus left the owners their non-contractual rights and remedies) was held to take the goods out of the class described as "comprised in any hire-purchase agreement."

But in *Times Furnishing Co.* v. *Hutchings* no notice was given under cl. 7 (*b*), which corresponded to the above instrument, and the plaintiffs relied on the automatic determination provided for in cl. 8. It was argued that notice was essential and that the clause made the agreement voidable, not void; but these contentions failed.

The defendant had, however, another shot in his locker. If the furniture was not "comprised in a hire-purchase agreement," it was, he pleaded, in the possession, order or disposition of his tenant by the plaintiffs' consent and

permission under such circumstances that the tenant was its reputed owner. I do not know why, but it was agreed between the parties that this state of affairs had obtained on the day when the defendant signed the distress warrant. This being so, the only question left was whether the tenant had since ceased to be reputed owner. And, on the authority of *Bartlett* v. *Bartlett* (1857), 1 De G. & J. 127 and *Rutter* v. *Everett* [1895] 2 Ch. 872, Humphreys, J., held that in the absence of steps taken by the plaintiffs to assert their right to the goods there was no evidence that their consent and permission had been withdrawn.

It is, I consider, unfortunate from the point of view of the growth of legal knowledge that the parties agreed that the tenant had at one time been apparent owner. This is the first reported case under the Law of Distress Amendment Act, and while, as Humphreys, J., observed, all the Bankruptcy Acts since the reign of James I have contained similar provisions, it is perhaps open to question whether these provisions are " so far as material, identical in language." For the Bankruptcy Acts provisions have always been limited to goods in the possession, etc., of the bankrupt *in his trade or business* (see for the present enactment the Bankruptcy Act, 1914, s. 38 (*c*)), and the qualifying words italicised are omitted from the Law of Distress Amendment Act, 1908, s. 4 (1); it follows that under the latter statute a wider view may be taken of " such circumstances that such tenant is the reputed owner thereof."

At first sight, it may seem that such wider view would not help the true owners of furniture lent on a hire-purchase agreement; but when it is remembered that circumstances may include facts of which judicial notice may be taken, it is at least arguable that circumstances under which a shop-keeper's stock-in-trade are reputed to be his differ from circumstances in which ownership of furniture is imputed to a tenant of a dwelling-house.

If one considers the position apart from the difference between the two enactments, it is true that certain authorities tend to show that the occupier of premises is presumed to own the furniture his premises contain. In *Ex parte Powell, Re Matthews* (1875), 1 Ch. D. 501, C.A., Bacon, C.J., held that there was a well-established custom of the trade that hotel-keepers should hire furniture; the Court of Appeal, however, considered that the judicial notice stage had not been reached. But in *Crawcour* v. *Salter* (1881), 18 Ch. D. 30, C.A., James, L.J., held that the practice was so common as to negative the foundation of the rule as to reputed ownership. In *Ex parte Brooks, Re Fowler* (1883), 23 Ch. D. 261, C.A., on the other hand, the furniture was hired out to an engineer and boilermaker by a friend who had bought it at a sheriff's sale, and in this case we find a very strongly worded rejection of the proposition that furniture could not be presumed to belong to the person enjoying its use. Jessel, M.R., said: " The suggestion is that a man living in a house of his own full of furniture is not to be taken to be the owner of the furniture. It is admitted that he was the owner of it at one time. It is suggested that the habits of English society have become so changed by furniture dealers occasionally letting out furniture on a three years' hiring agreement that the public at large no longer attribute the ownership of furniture to the person who is in possession of it . . . I certainly should be surprised to hear that it is so common for a man to hire a whole house of furniture," etc.

Do these words, uttered in 1883, ring true in 1938? And if applicable to goods in the possession of a man in his trade or business, are they to be applied to goods in the possession of a tenant regardless of his profession? I would submit that the habits of English society have notoriously been changed since 1883, so that no one should now be surprised to hear that it was common for a man to hire a whole house of furniture.

I did not include *Ex parte Emerson, Re Hawkins* (1871), 41 L.J. Bky. 20, among the authorities I mentioned above, for while Bacon, C.J., held in that case that courts must take notice of a custom which was so prevalent as that of hiring furniture, this judgment, besides having been ignored by Jessel, M.R., and his colleagues in *Ex parte Brooks, In re Fowler, supra*, was doubted in the more recent *Re Tabor, Ex parte Cork* [1920] 1 K.B. 808. The latter decision, however, concerned the status of office furniture hired by a wholesale grocer, and I would contend that even if it were a case of household furniture, the custom of hiring furniture has become more and more notorious since even that date. What with advertisements of easy terms on every hoardings, with Parliament passing a measure to deal with hire-purchase, and every music-hall comedian including some reference to the system in his stock-in-trade, one would not now be surprised if a tenant were not the true owner of " his " furniture. If no such admission as was made in *Times Furnishing Co.* v. *Hutchings* be made next time the opportunity of testing the position arises, I for one would not expect a judicial: " What is ' the never-never ' ? "

Our County Court Letter.

IMPROVEMENTS AND RENT INCREASES.

In a recent case at Rotherham County Court (*Wainwright* v. *Flute*) a claim was made for possession of a controlled house by reason of arrears of rent. The plaintiff's case was that the house was one of eighteen, upon which £948 8s. 10d. had been spent in compliance with the requirements of the corporation. A portion of this sum (£758) was spent on structural alterations and improvements, and the amount attributable to each house was £42 2s. 2d. Under the Increase of Rent, etc., Act, 1920, s. 2 (1) (*a*), it was permissible to increase the rent by 8 per cent. of that amount, viz., 1s. 3½d. a week. The defendant's case was that no part of the expenditure was attributable to structural alterations or improvements. The whole amount had been spent on repairs, which had been necessary merely in order to render the premises fit for human habitation. His Honour Judge Essenhigh held that the plaintiff was entitled to the 8 per cent. increase, and judgment was given in his favour for the amount of the arrears of rent. No order was made for possession, and no application was made for costs.

THE REMUNERATION OF SOLICITORS.

In a recent case at Leicester County Court (*Bray & Bray* v. *Calvert*) the claim was for £52 for professional services rendered and fees paid. The plaintiffs' case was that, in August, 1935, a car driven by the defendant's husband had been in collision with another car. Both drivers were prosecuted, and the defendant's husband was defended by a member of the plaintiff firm, whose fee was paid by an insurance company. An allegation that the defendant's husband was the worse for drink was not accepted by the magistrates. On the defendant's instructions, an action was subsequently brought against the other driver for damages. This action was unsuccessful, and the defendant had refused to pay her own costs which she had incurred to the plaintiffs. The defendant's case was that she had not given instructions for a High Court action, as she had merely instructed the plaintiffs to clear the name of her husband, who was a life-long teetotaller. His Honour Judge Galbraith, K.C., gave judgment for the plaintiffs, with costs.

THE REMUNERATION OF DOCTORS.

In a recent case at Oswestry County Court (*Shlosberg* v. *Firth*) the claim was for £18 12s. for work done as a *locum tenens*, and the counter-claim was for £31 as damages for negligence. The defendant's case was that he had employed the plaintiff at a salary of £6 a week in September, 1937. While driving the defendant's car, the plaintiff had a

collision with another car, whereby the defendant incurred a loss of £5, and also lost a rebate of £3 12s. under his insurance policy. The plaintiff had also failed to attend a patient, in answer to a telephone call, with the result that the case was taken over by another doctor. The consequent loss of fees amounted to about £20. The plaintiff's case was that he had not heard the name of Priddbwll Farm on the telephone, but was told that he would obtain further directions at Llangedwyn. He went there, but it was Saturday afternoon and the post office was closed and there was nobody about. No reply could be obtained at three houses, and the plaintiff returned to the surgery at Llanrhaiadr and waited for a further message, but none came. He made further enquiries on the Sunday, without success. His Honour Judge Samuel, K.C., gave judgment for the plaintiff for £18 12s., and for the defendant on the counter-claim for £11 11s. No costs were allowed. It transpired that the plaintiff had previously sued in the Salford County Court for £19 1s., but the action was dismissed for lack of jurisdiction.

HUSBANDS' LIABILITY FOR WIVES' DEBTS.

In a recent case at Harrogate County Court (*Hart* v. *Jevons*), the claim was for £22 13s. 6d., as the price of goods sold. The plaintiff was a tailor, and had supplied the defendant with clothing, such as a woman in her station might reasonably require. The plaintiff had never seen the defendant's husband, who had died in May, 1937. This was eleven months after the goods had been supplied. The estate was insolvent, and the plaintiff had been asked to render his account to the defendant. In view of the Law Reform (Married Women and Tortfeasors) Act, 1935, s. 1 (*b*) and (*c*), a married woman was now herself liable for her debts, unless she disclosed that she was acting as her husband's agent. As the defendant had not disclosed this fact, she was estopped from pleading it. The defendant's case was that there had been a previous transaction (in 1914) on which occasion she was accompanied by her husband, who paid with his own cheque. In 1936 her husband had made the appointment with the plaintiff on her behalf. The liability was therefore upon the estate of her late husband. His Honour Judge Stewart gave judgment for the defendant, with costs.

Reviews.

Encyclopædia of the Laws of England. Third Edition, 1938. Editor-in-chief, E. A. Jelf, Senior Master of the Supreme Court and King's Remembrancer. Vol. I, Abandonment of Action to Avowry. Royal 8vo. pp. xxviii and 710. London: Sweet & Maxwell, Ltd. Edinburgh: W. Green & Son, Ltd. London, Liverpool, Birmingham and Glasgow: The Solicitors' Law Stationery Society, Ltd. 50s. net.

In view of the fact that a practising lawyer, in order to possess a reasonably equipped library, may now find himself constrained to acquire and regularly maintain upwards of a hundred individual text-books, it is inevitable that the appeal of an encyclopædia must be almost universal. However good his library may be—and most for economic reasons alone are insufficient—every busy lawyer must regularly encounter the occasion when an informative general work would have supplied the required immediate assistance in respect of which the particular text book is not available. For this reason alone a new work of this nature is particularly welcome assuming that it passes a sufficiently high standard of accuracy and diversity of information. Strictly speaking, this encyclopædia is by no means a new work—the first edition appeared no less than forty-one years ago—but, as the second and last was published in 1906, the resultant revision and reconstruction entailed by a generation of legislation and case law justify its consideration as an original work rather than as an edition.

It is impossible within the compass of a reasonable review adequately to describe the scope of this work or the manner in which it has been carried out. Suffice it to say that Volume I, which covers from "A" Licences to Axle-Weight, deals with no less than 524 different subjects, many it is true solely by cross-reference to the appropriate major subject of which they are part, whilst 198 are covered by articles from authoritative contributors setting out clearly and concisely the statute and case law applicable. Of these articles no less than 118 would appear to be entirely new, the remainder being subjects which appeared in the last edition but are now revised and brought thoroughly up-to-date. Most of these articles contain for the benefit of those who require a more exhaustive research into any particular subject a bibliography of appropriate standard textbooks, for which alone this work deserves the highest commendation.

The principal and vital objection to works of an encyclopædic nature is that they not infrequently become out of date almost as soon as publication is complete. This objection, however, the publishers have overcome by the announcement that periodical supplements will be issued.

Master Jelf, the editor-in-chief, and his assistants are to be congratulated upon a masterly work which, judging from the standard of the volume recently issued, should prove invaluable to the profession. Equally to be congratulated are the joint publishers for their enterprise in resuscitating a work once authoritative in a manner which should ensure its restoration to a permanent position in the ranks of standard works. In our view this encyclopædia passes the most searching tests and, without encroaching upon the legitimate province of the accepted standard text-books, should provide the practising lawyer with information on almost every practical problem he may encounter—a claim few private libraries can make.

Stone's Justices' Manual, 1938. Seventieth Edition. By F. B. Dingle, Solicitor, Clerk to the Justices for the City of Sheffield and Clerk to the West Riding Justices, Sheffield. Demy 8vo., pp. cccii and (with Index) 2591. London: Butterworth & Co. (Publishers) Ltd; Shaw & Sons, Ltd. 37s. 6d. net. Thin edition, 5s. extra.

So far as is necessary, twenty-eight new statutes and over sixty new cases have been incorporated in this edition. The Matrimonial Causes Act, 1937, and the Summary Procedure (Domestic Proceedings) Act, 1937, have been fully dealt with. The inclusion of the greater part of the Public Health and Housing Acts of 1936, and of the Private Street Works Act, 1892, will make this work still more useful to local government officials.

Books Received.

England: Before and After Wesley. By J. Wesley Bready, Ph. D. (London). 1938. Demy 8vo. pp. (with Index) 463. Twenty-eight illustrations in gravure. London: Hodder & Stoughton, Ltd. 10s. 6d. net.

The English and Empire Digest; Cumulative Supplement. 1938. Edited by Philip F. Skottowe, LL.B., of the Middle Temple, Barrister-at-Law. London: Butterworth & Co. (Publishers) Ltd. 35s. net.

Reasonable Doubt. By Geoffrey de C. Parmiter. 1938. Demy 8vo. pp. xv and (with Index) 331. London: Arthur Barker, Ltd. 15s. net.

Wigram's Justices' Notebook. By R. W. H. Fanner, Solicitor, and Clerk to the Justices for the Bromley Division of the County of Kent. Fourteenth Edition, 1938. Crown 8vo. pp. xii (with Table of Cases) and (with Index) 556. London: Stevens & Sons, Ltd. 12s. 6d. net.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped, addressed envelope is enclosed.

Motorist, Cyclist and Pedestrian.

Q. 3544. Mrs. A, a pedestrian, while walking in the centre of the pavement, was knocked down by a motor car which mounted the pavement and injured her. The defence raised by the motorist is as follows: A pedal cyclist swerved across his front without warning, whilst the motorist was travelling at 20/25 m.p.h., the motorist swerved to avoid the cyclist, and in consequence mounted the pavement. Relying apparently on the Bywell Castle Rule, the motorist contends that he is not liable at all, as he was placed in an emergency, and, further, that if he was liable at all, any damages will be apportioned as between him and the cyclist. I should be obliged if you will kindly let me have your opinion on the following questions:—

(*a*) Whether the Bywell Castle Rule applies here, since the motorist was not put in sudden imminent *personal* danger?

(*b*) Whether the cyclist is liable, his negligence being a substantial part of the cause of injury, or whether he is not liable, his negligence not being the proximate cause of the injury?

(*c*) Should both the motorist and the cyclist be sued, or merely the motorist?

A. (*a*) The Bywell Castle Rule is not applicable to the circumstances, for the reason suggested.

(*b*) The question whether the cyclist is liable does not arise as between him and the pedestrian.

(*c*) Only the motorist should be sued by the pedestrian. Apparently the motorist has a good claim against the cyclist, but the latter should only be brought in (if at all) on a third party notice issued by the motorist as defendant.

Deferred Annuity Policy—Resulting Trust of returned Premiums.

Q. 3545. In 1936, a widow, W, effects a policy for the payment of a deferred annuity. The policy provides (*inter alia*) for the return of all premiums to a named beneficiary, the sister of the deceased V, in the event of the death of the policyholder before the annuity becomes payable. The policy also provides for the surrender of the policy by the holder (after two years' premiums have been paid), the surrender value to be paid to the holder being based on the premiums paid. The policy is of course under the seal of the society, an ordinary assurance society, but not under the seal of W. In 1938 W makes a will which does not refer to the policy, but appoints V one of two executors and gives the residue of the estate among five persons, of whom V is one. Shortly after making the will W dies, having kept up the payments on the policy, but the annuity has not become payable. Is V a trustee of the moneys repayable by the society, either by virtue of a resulting trust or by virtue of the fact that the disposition in her favour is not executed in accordance with the requirements of the Wills Act, or is she entitled to retain the moneys beneficially?

A. As there is no question of an "advancement" in this case, we express the opinion that V is a trustee of the moneys repayable by the society by reason of a resulting trust. W acquired certain rights in the name of a third party. It is a well established principle of equity that resulting trusts arise in the case of the purchase of freeholds in the name of a third party: "And the principle applies to personal as well as real estate, to a bond, to an annuity, to a policy of insurance, to a yacht, or other chattel interest" ("White and Tudor's Leading Cases in Equity," 8th ed., vol. II, p. 827, citing *Re A Policy, etc.* [1902] 1 Ch. 282, with regard to a policy of insurance).

Settled Property—Estate Duty on Successive Deaths.

Q. 3546. A, by his will and codicil, devised and bequeathed certain freehold property to his son B for his life, and after the death of B to B's wife C for her life. On the death of C to the children of B and C absolutely. A died in 1910 and estate duty was then paid upon the whole of his estate, including the settled land. B died in 1935 and the property passed to C for her life. The Estate Duty Office are claiming estate duty upon the settled land, which claim, they say, arises on the death of B. Will you please state whether duty is payable upon the death of B, as it seems that duty will fall to be paid upon the death of C, and if duty has now to be paid it seems that duty will be paid three times in all in respect of the said property.

A. Estate duty is payable in connection with the death of B. The exemption conferred by s. 5 (2) of the Finance Act, 1894, on settled property from a further levy of estate duty was abolished by s. 14 of the Finance Act, 1914 (except as to spouses). The settlement estate duty presumably paid on the death of A will, however, be allowed against the estate duty (*idem.*, proviso (*b*)). Application should be made for payment of interest on the settlement estate duty from the 15th August, 1914 (proviso (*b*)). No further estate duty will be payable on the death of C, as proviso (*a*) to s. 14 will then come into operation by reference to the payment of estate duty on B's death.

Gift *inter vivos* **between Spouses**—Estate Duty and Stamp Duty.

Q. 3547. My client is the absolute owner of freehold properties worth about £2,000, and wishes to make a gift of one-half share to his wife. Would you please advise the best way of carrying out my client's purpose, and suggest a precedent. Would you please also advise what will be the *ad valorem* stamp on carrying the transaction through. Will *ad valorem* duty be payable on the whole or only on one-half of the value of the property? What estate duty will be payable on the death of (1) the husband, (2) the wife?

A. There seems to be no reason why one moiety of the property should not be conveyed by the husband to his wife (compare the precedent of a conveyance to a daughter, "Key and Elphinstone, 13th ed., vol. I, p, 594). *Ad valorem* stamp duty would be payable at £1 per cent. in respect of the moiety so conveyed subject to adjudication. There would be no liability to death duties on the husband's death in respect of this moiety unless he died within three years or reserved some benefit out of or in respect of it during his life. On the wife's death, death duties would be payable in respect of her moiety as part of her free estate; and, similarly, duties would be payable on the husband's death on his moiety. An alternative method would be for the husband to convey the property to himself and his wife jointly to the intent that the survivor should take the whole. In that case, if the husband survived the three years and died first, estate duty would be payable on one moiety. If the wife predeceased, estate duty would similarly be payable on one moiety.

To-day and Yesterday.

LEGAL CALENDAR.

16 MAY.—On the 16th May, 1836, Monsieur de Vandegre, a gentleman of Puy de Dôme, was tried at the Riom Assizes for the murder of his son. The young man had fallen in love with a servant girl, and in defiance of his parents had proposed to marry her. He had in fact been obliged to fly from their resentment to the home of his beloved. One night he had gone out for a short time, and later he had been found shot. There was strong evidence that the father had threatened his son's life and the rector of the parish swore that he had said that sooner than permit a degrading marriage he would kill him. To the intense discontent of the district, the verdict was an acquittal.

17 MAY.—On the 17th May, 1689, Mr. Justice Rokeby recorded in his diary: "I being now placed as one of the Judges of England, which is a great trust, and requires much greater strength and abilitys both of mind and body than I can find in myself (1) I doe in the first place humbly implore the special influence, supplys and assistance of Divine grace . . . (2) Next I desire seriously to fix my mind upon Jehosophat's instructions to his judges in the 2nd Chron. xix chap. 6 . . . I look upon the cause wherein King William and Qn. Mary and the Parliament of England are now ingaged to be the cause of God and Christ against Satan and Antichrist . . ."

18 MAY.—On the 18th May, 1848, a young man named William Tomkins was found guilty of murder at the Old Bailey and sentenced to death. One night in Vincent Street, Westminster, a passer-by had been startled by a cry. Going towards the direction from which it came, he had found a woman lying face downwards in the road. Nearby, in the entrance to a dim court, stood the prisoner. He made no attempt to run away, and when questioned went slowly towards the woman and said: "Maria, why don't you get up." Then producing a knife he said: "I have stabbed her with this knife." Then he added: "Call the police; I'll give myself up."

19 MAY.—On the 19th May, 1882, only five days before his death, Lord Justice Holker resigned from the Court of Appeal, where he had sat only four months.

20 MAY.—Sir William Brenchesley, who died on the 20th May, 1406, at his house in Holborn, had retired from his post as a Justice of the Common Pleas little more than a month before. He had been appointed by Richard II, but in the upheaval which shook that unfortunate king from the throne he not only succeeded in maintaining his place, but at the coronation of his successor he became a Knight of the Bath.

21 MAY.—On the 21st May, 1529, there began in the Parliament Chamber of Blackfriars a moving, momentous and unprecedented trial. Cardinal Wolsey and Cardinal Campejus sat by the Pope's authority to determine the validity of the marriage of King Henry VIII and Queen Catherine of Aragon. The pathetic personal plea for justice which the unhappy lady addressed to her husband as soon as the commission had been read deserved immortality by the simple dignity of its eloquence, and, rendered into verse by the hand of Shakespeare, lives for all time.

22 MAY.—On the 22nd May, 1885, a "dog doctor" of Clerkenwell was tried at the Old Bailey for stealing ten dogs found at his house and identified by the owners. Hawkins, J., felt witty that day. One witness said his pug was not worth much, as it had only one eye. Judge: "Then most dogs have two eyes?" (Laughter.) Witness: "Yes, most." Judge: "Then yours was singular." (Laughter.) When the man was acquitted, Hawkins said: "You have had a very lucky escape, I tell you. Take care what you do in future."

THE WEEK'S PERSONALITY.

When Sir John Holker was appointed to the Court of Appeal on the recommendation of Gladstone, in January, 1882, he was already virtually a man condemned to death. Six years' concentration on the laborious duties of a law officer had worn down his sturdy Lancashire constitution, and more than a year's rest and recuperation on the Riviera had failed to repair the ravages of overwork in the service of Disraeli's ministry. His devotion had won the admiration even of his political opponents, and it was at the hands of the Liberal Prime Minister that he received an office which seemed to offer him a less exacting sphere of utility. But it was too late to save him, and medical skill could do little more than alleviate his sufferings. For four months he discharged his judicial duties faithfully when prudence would have kept him at home. At last, on the 19th May, he surrendered and resigned. Five days later he died. So passed that "tall, plain Lancashire man who never seemed to . . . distinguish himself by ingenuity or eloquence, but through whom the justice of his cause appeared to shine as through a somewhat dull but altogether honest medium."

THE JUDGE'S HOROSCOPE.

Not long ago it was reported that a barrister had told certain astrologers assembled at Harrogate that persons casting horoscopes were liable to be prosecuted for witchcraft, and that even the author of the harmless necessary weather forecast is not safe. Shortly afterwards, an action came on in the Wandsworth County Court concerning an alleged order for 3,000,000 horoscopes. Much intrigued, Judge Haydon asked to see his, and received from the stars the encouraging message: "Without doubt you have a very fine future, provided you take moderate care and advantage of the opportunities which are about to come your way." With that much His Honour was content, for, as he said, putting down the document, "There are yards of it." An ill-advised question in cross-examination once brought the future Mr. Baron Garrow a much less flattering forecast. While at the height of his reputation at the Bar he once asked a witness whether he was not a fortune teller. "I am not," was the reply, "but I can tell yours." "What is that to be?" asked Garrow. "Why, sir," replied the witness with meaning emphasis, "as you made your first speech at the Old Bailey, so you will make your last there." But Garrow did not "die in his boots."

HAVE YOU ANY WOOL?

The House of Lords and the world of law have been shocked by the paradoxical discovery that the Woolsack contains no wool and that the Lord Chancellor in fact sits on a horsehair seat upholstered in red. The Office of Works has been asked to consider restoring the original filling. The official seat of the early mediæval Chancellors was a marble chair in Westminster Hall, and when or why a sack of wool was first considered more appropriate none can tell with certainty. There is a popular belief that the Woolsack was placed before the eyes of the Upper House as a reminder of the commodity which was the source of the national wealth. But were that so, once Englishmen had been led out of the green pastures and their civilisation based on the coalfields, the Lord Chancellor should have been found sitting, a martyr to progressive symbolism, on a sack of coal. A somewhat less fanciful origin is suggested by the rule of Henry VIII's day that he should sit on "the uppermost sack in the Parliament chamber, called the Lord Chancellor's Woolsack." Perhaps a sack of wool was the mediæval precursor of the easy chair. But though the Victorians stuffed it with horsehair filling of their sofas, the living embodiment of our law should not be based on an inaccuracy, and the Woolsack should be restored to authenticity forthwith.

Notes of Cases.

House of Lords.

Workington Harbour and Dock Board *v.* Trade Indemnity Co. Ltd. (No. 2).

Lord Atkin, Lord Thankerton, Lord Russell of Killowen, Lord Macmillan and Lord Maugham.
15th March, 1938.

Res Judicata—Contract of Construction—Breaches by Contractor—Amount due to Plaintiff certified by Engineers—Action on Bond given as Security for performance by Contractor—Contention by Defendants that not bound by Certificate—Bond held not Binding—Renewed Action relying on Engineers' Certificate—Whether Maintainable.

Appeal from a decision of the Court of Appeal (Greer and Slesser, L.JJ., MacKinnon, L.J., dissenting) reversing a decision of Lewis J., in Chambers, which reversed an order of Master Simner ordering the action begun by the appellant Board to be dismissed.

A former action had been previously begun by the same plaintiffs against the same defendants on a bond given by the latter guaranteeing the performance by a company of contractors of a contract by which they undertook to build a dock for the plaintiffs. By that contract the contractors undertook to complete specified works for a sum to be certified in writing by engineers according to a schedule of prices. It was provided *inter alia* that the contractors should pay £500 for every week's delay after the stipulated time. On certification by the engineers that the contractors had made default, the plaintiffs might take possession of the works and the engineers were then to certify the balance payable by either side, having regard to the value of work completed, length of delay, etc. During the currency of the contract, the contractors obtained advances of £20,000 and £25,000 from the plaintiffs, repayable by deduction periodically from payments due to the contractors under the contract. The plaintiffs required, in order to secure performance of the contract, that the contractors should obtain a guarantee up to £50,000; and the defendants accordingly gave the bond on which the former and the present action were both brought. The bond incorporated the contract of construction. The contractors, having miscalculated the cost of dealing with water on the site and become financially embarrassed, on the engineers' certificate the plaintiffs took possession of the works, and £78,785 was certified to be due to them. The contractors failed to pay that sum, whereupon the plaintiff Board claimed £50,000 from the defendants. The trial judge held that the bond, as being in the nature of an insurance, was void for non-disclosure, and that the insertion in the engineers' certified amount of sums due on the two advances vitiated the bond as against the defendants. The Court of Appeal rejected both those grounds of decision, and the House of Lords agreed with the Court of Appeal as to non-disclosure, but allowed the defendants' appeal on the ground that the certificate did not bind the defendants, because it included unascertained sums in respect of advances, and there was no other evidence of loss suffered through the contractor's breach of the building contract. The plaintiffs subsequently brought the present second action, which the Master dismissed on the ground that the cause of action was the same as in the first, alleging that the contractors had committed certain breaches, including failure to complete within the agreed time, and claiming as loss for the breaches alternative sums, under the certificate, as liquidated, or as general damages, £50,000 under the bond, or £40,364.

Lord Atkin said that where, as in the present case, the objection to the procuring could properly be raised by a plea in bar such as *res judicata*, the more correct procedure was for the defendant to deliver his defence, and, if desired, set down the point of law raised by the plea of *res judicata* to be heard as a preliminary point. As to the question in dispute, it was well established that, in an action on a money bond as here, the plaintiff must establish damages occasioned by the breaches of condition. If he succeeded, he recovered judgment on the whole of the bond, but could only issue execution for the amount of the damages proved. The judgment then remained as security for the recovery of damages for other future breaches not ascertained. The future breaches could be suggested under a *scieri facias* which made the existing judgment effective in respect of the further damages proved. If the plaintiff succeeded in establishing a breach or breaches in his first action, and had accordingly obtained judgment for the full amount of the bond, there was no procedure under which he could assign or suggest breaches which were not future breaches, but existed at the date of the first action. His lordship would, however, assume that, although the plaintiff, in his first action, had sued for the amount of the bond and failed, judgment on the debt being given for the defendant, yet, if he could suggest another and separate breach, he might again sue on the bond, though the breach existed at the date of the first action. The question would always be open whether the second action was for the same breaches as the first, in which case the ordinary principles governing *res judicata* would prevail. In the present case, in his opinion, the plaintiffs were suing on precisely the same breaches as those in the first action, and for the same damages, though on different evidence. In the first action, the plaintiffs were repeatedly warned that the defendants contended that they were not bound by the engineers' certificate. They chose, not unreasonably, to risk adhering to the certificate as the only necessary proof, they failed, and the consequence was inevitable. The plea of *res judicata* succeeded, and the appeal must be dismissed.

The other noble lords agreed.

Counsel: *Sir William Jowitt*, K.C., *N. L. C. Macaskie*, K.C., *A. Inman*, K.C., and *Lawrence Mead*, for the appellants; *Sir Stafford Cripps*, K.C., *Sir Walter Monckton*, K.C., *F. R. Evershed*, K.C., and *H. J. Astell Burt*, for the defendants.

Solicitors: *Johnson, Weatherall, Sturt & Hardy; Wedlake, Letts & Birds.*

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

Inland Revenue Commissioners *v.* National Mortgage and Agency Co. of New Zealand.

Lord Maugham, L.C., Lord Atkin, Lord Thankerton, Lord Russell of Killowen and Lord Macmillan.
17th March, 1938.

Revenue—Income Tax—English Company Trading in New Zealand—Relief from English Tax in respect of Income taxed in New Zealand—Principles—Finance Act, 1920 (10 & 11 Geo. 5, c. 18), s. 27.

Appeals from a decision of the Court of Appeal reversing a decision of Finlay, J.

The appeals related to claims by the respondent company to relief under s. 27 (1) of the Finance Act, 1920 (as amended by the Finance Act, 1927), which, so far as material, provides: "If any person who has paid . . . United Kingdom income tax for any year . . . on any part of his income, proves . . . that he has paid Dominion income tax for that year in respect of the same part of his income, he shall be entitled to relief from United Kingdom income tax . . . on that part of his income at a rate . . . to be determined as follows . . ." The respondent company were incorporated in England. They had issued debentures secured on their uncalled capital. The amount of interest paid on the debentures for the company's year preceding the year 1928–29 (1928–29 being taken as a sufficient illustration of the principles involved) was £39,321. The company's business consisted mainly

of lending money in New Zealand on mortgages and short loans. The greater part of the company's income arose in New Zealand as interest on the loans. Being controlled in England, the company were taxed to English tax on the whole of their profits wherever arising. They were also taxed to New Zealand tax in respect of profits arising in New Zealand. In both countries tax was assessed by reference to the year preceding that of assessment.

LORD MAUGHAM, L.C., said that s. 27 clearly related to incomes ascertained for a particular year of assessment according to the systems in force in the two countries. The relief afforded was against double taxation, and was given as a relief from English tax. It was necessary to prove (1) liability to pay English tax on part of income, and (2) payment of Dominion tax for the same year on the same part of income. That involved ascertaining those " parts " in the two countries by excluding from the statutory incomes in the two countries items which did not satisfy the conditions according to the true construction of the section. He (his lordship) would call the part in England, as to which the taxpayer could prove that he had paid Dominion tax in respect of the same part, " United Kingdom comparative income," and the similar part, in respect of which he had paid New Zealand income tax, the " New Zealand comparative income." The problems to be solved were the amounts of those two comparative incomes. The section afforded relief in respect of the smaller of the two. The assessed profits of the company for assessment to English income tax were £70,017 for 1928–29, of which £44,468 was United Kingdom comparative income. The debenture interest paid by the company in Great Britain was, under the Income Tax Act, 1918, not deducted in arriving at the assessment, although the company, of course, had the right to deduct the tax on paying interest to the debenture-holders. In New Zealand, the company, after deductions and exemptions allowed there by the Land & Income Tax Act, 1923, were assessed in the sum of £26,592. They had also, under s. 116 of that Act, paid tax in respect of income derived by the holders of the debentures which they had issued " as agent of all debenture-holders, whether absentees or not." But the debentures, being registered in England, did not confer any charge on property in New Zealand. The holders residing in Great Britain could not, therefore, as was not disputed, be directly liable to pay tax under a statute of New Zealand. The interest on debentures was paid under a contract made in England, and to be performed there, and the company would be unable to recover from the holders the tax paid in New Zealand on the interest due on the debentures. See *Indian and General Investment Trust Ltd.* v. *Borax Consolidated Ltd.* [1920] 1 K.B. 539. The question then arose, whether the New Zealand comparative income was £26,592, or whether it ought to include the debenture interest assessed and paid by the company under s. 116 of the Act of New Zealand, which appeared to be £33,609, making a total of £60,201. The Crown contended that the sum of £9,998, being the 5 per cent. improved value of the land specially exempt under s. 83 of the Act of New Zealand, should also be deducted from the £44,468, leaving £34,470 as the United Kingdom comparative income. Two points of principle had been argued for the Crown : (*a*) that, for the purposes of s. 27 of the Act of 1920 the component elements of the income, as assessed and computed in each country, must be investigated, with elimination of elements not common to each system of taxation. By that principle it was sought to deduct the £9,998 from the United Kingdom comparative income ; and (*b*) that the interest paid to the debenture-holders was their income, for which the company had been taxed as their agents, and that that income did not fall within the expression " his income " in s. 27 (1). If that contention prevailed, the sum of £33,609 of debenture interest paid could not be treated as part of the company's income in New Zealand in respect of which it had paid income tax, and therefore could not be added for the purposes of s. 27 to the company's New Zealand statutory income of £26,592. His lordship referred to *Inland Revenue Commrs.* v. *Dalgety & Co.* [1930] A.C. 527, and *Assam Railways and Trading Co. Ltd.* v. *Inland Revenue Commrs.* [1935] A.C. 445 and said that the reasons given in the latter case showed that rules which determined, in the United Kingdom or in a Dominion, the allowances or deductions permissible in assessing in either country must be disregarded in determining the comparable incomes in the two countries, provided that the incomes were derived from the same source. As to the second contention, he (his lordship) could not see how the company could in any true sense be an agent to pay tax for debenture-holders who were not liable to pay it. The appeals should be dismissed.

The other noble lords concurred.

COUNSEL : *The Solicitor-General* (Sir Terence O'Connor, K.C.), and *R. P. Hills*, for the Crown ; *A. M. Latter*, K.C., and *Cyril King*, K.C., for the respondents.

SOLICITORS : *The Solicitor of Inland Revenue ; Freshfields, Leese & Munns.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Court of Appeal.

Allen *v.* Trehearne (Inspector of Taxes).

Greene, M.R., Scott and Clauson, L.JJ.
4th and 5th May, 1938.

REVENUE—INCOME TAX—LUMP SUM PAYABLE BY COMPANY TO OFFICIAL ON TERMINATION OF OFFICE—OFFICE TERMINATED BY DEATH OF OFFICIAL—SUM PAID TO EXECUTORS—LIABILITY TO ASSESSMENT—FINANCE ACT, 1927 (17 & 18 Geo. 5, c. 10), s. 45 (5) (6).

Appeal from a decision of Lawrence, J. (81 SOL. J. 339).

The remuneration of the managing director of a company consisted of a fixed yearly salary, yearly commission on profits and a terminal sum of £10,000 payable to him or his personal representatives on the final termination of the service agreement for any cause save wilful default in the performance of his duties. He died on the 17th January, 1934, and the company paid his executors £10,000 in July, 1934. Lawrence, J., held that they were assessable to income tax in respect of that sum for the year ending the 5th April, 1934, under the Finance Act, 1927, s. 45 (6), inasmuch as it was a profit of his office for the year in which he died.

GREENE, M.R., dismissing the executors' appeal, said that the sum was remuneration for services performed under an agreement and only by serving under the agreement could the deceased become entitled to it. All the time he was serving he was earning it. It might fall to be paid in his life or after his death, but the nature of the payment did not become different because the occasion on which it fell to be made was not the same in every case. It was just as much remuneration if paid on the occasion of death as if paid on the occasion of determination of the agreement by notice. If it had been received by the deceased in his lifetime it would have fallen exactly within r. 1 of Schedule E. The present question turned on the Finance Act, 1927, s. 45. In sub-s. (5) the words " where . . . a person ceases to hold an office " could not be taken to exclude " ceases by death." The period defined therein was from the 6th April, 1933, to the 17th January, 1934, the date of cessation. The £10,000 were emoluments for that period. It was not necessary that at the very moment when, under the contract, the emolument became payable, the man must be alive. On the construction of sub-s. (5) in relation to the facts this sum was a proper subject-matter of charge. The executors had relied on the words " if he had not died " in sub-s. (6), contending that if the deceased had not died there could not have been any question of chargeability because the sum would not have been

payable. But those words had reference simply to the question of there being a person to be charged in respect of something which *ex hypothesi* had become chargeable under sub-s. (5).

SCOTT and CLAUSON, L.JJ., agreed.

COUNSEL: *Needham*, K.C., and *Terence Donovan*; *The Attorney-General* (Sir Donald Somervell, K.C.), and *R. Hills*.

SOLICITORS: *Windybank, Samuell & Lawrence*; *Solicitor of Inland Revenue*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Lambert *v.* **F. W. Woolworth & Co.**

Greer, Slesser and MacKinnon, L.JJ.
11th May, 1938.

LANDLORD AND TENANT—BUSINESS PREMISES—IMPROVEMENTS AND ALTERATIONS—LANDLORD'S CONSENT REFUSED—WHETHER UNREASONABLY WITHHELD—LANDLORD AND TENANT ACT, 1927 (17 & 18 Geo. 5, c. 36), s. 19 (2).

Appeal from a decision of Simonds, J. (81 SOL. J. 499).

The defendants held a lease of shop premises for a term of forty-five years from 1931, at a rent rising to £3,750 a year. They covenanted to use the premises as a first-class shop or shops and "not without the previous consent in writing of the lessors, to erect or suffer to be erected upon the said demised premises nor to make or suffer to be made any structural alterations in or additions to be erected upon the said demised premises." It was provided that if alterations were made with the consent of the lessors no fine, premium or increase of rent should be demanded for their approval. The defendants having acquired a tenancy of land at the back belonging to different landlords proposed to pull down the back wall and the rear part of the side wall, and to build so that there stood on the combined property one large shop. the staircase and staff accommodation being removed from the original shop to the other premises. They undertook to reinstate the premises at the end or sooner determination of the tenancy. In May, 1935, the landlords refused their consent, except on payment of £7,000. In an action by the lessees claiming that the landlords had unreasonably withheld their consent and that they were entitled to make the improvements without further licence, the Court of Appeal unanimously held that the lessees had not discharged the onus of proving that the lessors had unreasonably withheld their consent, there being no evidence that £7,000 was an unreasonable sum to demand. It was also held by a majority that the proposed alterations were "improvements" within the Landlord and Tenant Act, 1927, s. 19 (2) ([1937] Ch. 37; 80 SOL. J. 703). The lessees' solicitors next wrote to the lessors' solicitors offering to submit the question what was a reasonable sum to arbitration. The offer was rejected. Subsequently, they made formal application for licence to make the alterations, offering to undertake to reinstate the premises at the end of the term, to give security for that obligation and to pay the lessors' costs, but not offering any sum for damage to the reversion. The lessors refused licence and made no counter-proposal and began an action claiming that the proposed alterations were not improvements within s. 19 (2), that to make them would be a breach of covenant and that the licence was not unreasonably withheld. Simonds, J., held that the proposed alterations were improvements, but that the lessors had not unreasonably withheld their consent. The lessors appealed against the first finding and the lessees cross-appealed against the second.

GREER, L.J., delivered a dissenting judgment.

SLESSER, L.J., in giving judgment, said that s. 19 (2) contemplated that an alteration might be an improvement, though it produced damage to or diminution in the value of the premises or did not add to the letting value of the holding. The mere fact of damage to or diminution in the value arising to the premises did not necessarily prevent the alteration being an improvement. The question whether it was an improvement must be regarded from the tenant's viewpoint. Further, it must be limited to the demised premises, since that only was the subject-matter of s. 19 (2). Whether the proposed alteration was such as to destroy the subject-matter demised was one question. Whether, when it could be made without destroying the subject-matter, it was to be taken as an improvement, was another. Thus, where what was demised was merely described as land, though it had buildings on it, it might be that under a licence to alter buildings a complete reconstruction might be permissible, though it would result in destroying the original building. But where the demised premises were described with great particularity, e.g., in the case of a building with a defined number of floors, the removal of one floor might be outside the scope of the powers given to alter the premises, in that what would be done would not be alteration, but destruction of the subject-matter. Here the alterations proposed were within the powers given by the lease. They would not prevent the new premises on the land demised being used as a first-class shop. All that was being done was to extend the area partly over adjacent land. His lordship could not see why the removal of a wall should not be treated as an improvement if it added to the floor space. The alteration proposed was an improvement and the covenant in the lease must have imposed on it the proviso in s. 19 (2). The appeal failed. As to the question whether the consent was unreasonably withheld, the refusal was unqualified, though the lessors might have asked for a particular sum or given consent on the agreement by the lessees to pay what the tribunal might consider reasonable. Thus, they had abstained from claiming the benefit of s. 19 (2) and could not be heard to say as evidence of reasonableness that the premises had suffered damage or diminution in value and that the lessees had not offered to compensate them. The lessees had discharged the onus of proving that consent had been unreasonably withheld. The cross-appeal succeeded.

MACKINNON, L.J., agreed.

COUNSEL: *Radcliffe*, K.C., and *R. W. Turnbull*, for the appellants; *Sir Stafford Cripps*, K.C., *Evershed*, K.C., and *Merlin*, for the respondents; *B. Miles* held a watching brief.

SOLICITORS: *Robins, Hay & Waters*, for *Lacey & Son*, of Bournemouth; *Lovell, White & King*; *Seaton, Taylor & Co.*

[Reported by FRANCIS. H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re **Cleadon Trust Ltd.**

Bennett, J. 12th April, 1938.

COMPANY—SUBSIDIARY COMPANY—ADVANCES BY DIRECTOR—REQUEST OF SECRETARY—BENEFIT OF COMPANY—DIRECTOR'S PROOF IN VOLUNTARY LIQUIDATION—WHETHER COMPANY HAD ACQUIESCED.

A company had two subsidiary companies. The directors of the company were the same persons as those of the subsidiaries, and the secretary of the company was the secretary of the subsidiaries. From time to time one of the company's directors at the secretary's request advanced sums amounting to £17,300 to the subsidiaries in the expectation that the company, which benefited by these payments, would repay him. In December, 1932, a resolution was passed at a meeting of the directors of the company that the advances made between July and December, 1931, amounting to £13,800, should be assumed by the company. Only the director who had made the advances and another director were present, the quorum for such meetings being two. The company having gone into voluntary liquidation, a proof was put in by the director who had made the advances to the extent of the amount advanced and £900 interest. The liquidator rejected the proof on the ground that the sum in

question had without authority been treated as advanced to the company, and that the resolution was invalid by reason of Art. 116 of the Articles of Association of the company, whereby no director should vote as a director in respect of any contract or arrangement in which he was interested. It was now sought to reverse this rejection.

BENNETT, J., dismissing the application, said that a limited company was not bound to repay money paid for its benefit at the request of its secretary. He had no authority to make such a request. It was here disputed whether the company ever knew of or acquiesced in what was being done. It had been contended that the knowledge of the two directors and their acquiescence were the knowledge and acquiescence of the company. But the company was an artificial and not a natural person. It could only function through agents authorised to act and acting within the limits of its constitution, i.e., the provisions of the statutes to which it owed its being and its memorandum and articles of association. As to the resolution of December, 1932, if the intention was to ratify on behalf of the company a series of transactions entered into by its agents without authority it was inoperative, not having been passed by a quorum competent to act, since by Art. 116 the director concerned was precluded from voting and without him there was no quorum.

COUNSEL: *Evershed*, K.C., and *Roger Turnbull*; *Cohen*, K.C., and *K. Mackinnon*.

SOLICITORS: *T. D. Jones & Co.*; *Bentleys, Stokes & Lowless*, for *Criddle, Ord & Muckle*, of Newcastle-on-Tyne.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Miller *v.* Amalgamated Engineering Union.

Morton, J. 27th April, 1938.

TRADE UNION—ACTION BY ADMINISTRATOR OF DECEASED MEMBER—CLAIM FOR ARREARS OF SUPERANNUATION BENEFIT—WHETHER UNION UNLAWFUL AT COMMON LAW—TRADE UNION ACT, 1871 (34 & 35 Vict., c. 31), s. 4.

The plaintiff was the son and administrator of one Miller, who died in 1936, and who had been a member of the defendant union, the union being registered under the Trade Union Acts, 1871 to 1927. He sought a declaration that the union was bound to pay him £123 15s. arrears of superannuation benefit owing to the deceased. There was an alternative claim for a declaration that the deceased was at his death a fully qualified member and that the administrator was entitled to payment of the benefit due to him under its rules and was not prejudiced by the failure of other relatives to join in the claim. By a further alternative claim the administrator sought an injunction to restrain the union from retaining or applying for the benefit of other members' funds which should have been paid to him. The defendant union contended that it was an association unlawful at common law, and relied on the Trades Union Act, 1871, s. 4. It contended that the court could not entertain the action.

MORTON, J., dismissing the action, said that the main question was whether the action was a legal proceeding instituted with the object of directly enforcing an agreement to pay benefits from the union's funds. For the union it had been contended that the 1871 Act prevented the court from entertaining the action. Its being registered as a trade union involved its being deemed to be a union for the purposes of the Act. On the question whether the action was to enforce an agreement to pay benefits from the funds, it was plain that this was a direct attempt to interfere with the application of those funds. The union was an unlawful association at common law, though the plaintiff had tried to separate the benefit provisions from the machinery which was in restraint of trade. The court could not entertain the proceedings.

COUNSEL: *George Baker*; *Geoffrey Hutchinson*.

SOLICITORS: *Scott Duckers & Co.*; *Evill & Coleman*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Graves *v.* Pocket Publications Ltd.

Simonds, J. 28th April, 1938.

COPYRIGHT—BOOK—LITERARY WORK—ANALYSIS OF SEVERAL PROFESSIONS—ARTICLE IN PERIODICAL—CERTAIN FACTS AND FIGURES ABSTRACTED—WHETHER INFRINGEMENT.

The plaintiff was the author of a book of sixty-one chapters entitled "Other People's Money," and consisting of an analysis of a large number of professions and employments, the compilation of which had involved labour in the collection of material facts. These were presented in literary form. The publishers of a periodical included therein a page headed "What They Earn in a Year," and purporting to be written by the plaintiff. It consisted of a list of twenty-six occupations, together with the annual income which might be expected to be earned therein. Most of the figures had been taken direct from various parts of the plaintiff's book, but in some cases weekly or monthly earnings given therein had been turned into an annual income. The plaintiff brought an action in respect of alleged infringement of his copyright against the publishers and printers.

SIMONDS, J., said that the article constituted an infringement. The book was a compilation in a literary form. There was no infringement of the copyright in the literary form, but the compilation or a substantial part of it had been reproduced, the defendants having selected the earnings of the professions and occupations which they thought would interest the public most. The plaintiff was entitled to an injunction and damages both for infringement and conversion, but the damages under each head might overlap and must not be awarded twice over. The damages should be £12 10s. for infringement against each of the defendants, and £7 10s. against the publishers only. As an injunction was granted costs should be on the High Court scale.

COUNSEL: *P. S. Bevan*; *G. Alchin*; *Macgillivray*.

SOLICITORS: *Walter, Burgis & Co.*; *Bartlett & Gluckstein*; *Roney & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Fowke *v.* Fowke.

Farwell, J. 2nd May, 1938.

DEED—HUSBAND AND WIFE—SEPARATION DEED—PROVISION FOR PAYMENTS TO WIFE—SUBSEQUENT DECREE OF NULLITY—EFFECT ON PAYMENTS.

The plaintiff married R.F. in 1911. In 1931 they entered into a deed of separation under which the plaintiff was entitled to an annuity. On the 4th December, 1933, R.F. obtained a decree of nullity on the ground of the plaintiff's incapacity and immediately afterwards married the defendant who, when he died in February, 1934, was his executrix. Thereafter payment of the annuity ceased. The plaintiff claimed that she was entitled to payment of the annuity from the estate of R.F.

FARWELL, J., said that to constitute a valid marriage in England it was necessary to prove (1) a ceremony, and (2) consummation. If the marriage was not consummated there was no marriage in fact. It had been argued that the whole foundation of the present contract was that the parties were husband and wife and that in view of the decree of nullity the contract was not binding. But the agreement was one which the plaintiff could enforce. There had been no mistake of fact. The parties to the deed knew that the marriage had not been consummated. His lordship did not know whether either of them were aware that the husband in certain circumstances could get a nullity decree. If they were ignorant of that, it was a mistake of law and not of fact. Though there had been no marriage in the legal sense the status of the parties was not so different from that of married people as to render the agreement one for which there was no consideration. There were rights at that date which the

parties were entitled to enforce. Thus, under the agreement the plaintiff was no longer entitled to pledge R.F.'s credit. The obligation in the deed was binding on the executrix.

COUNSEL: *Roy Wilson; W. Latey* and *A. E. Clark.*
SOLICITORS: *G. F. Wilkins; Pickering, Kenyon & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Owners of S.S. "Maisol" *v.* Exportles, Ltd.

Goddard, J. 3rd April, 1938.

SHIPPING—CHARTER-PARTY—SPECIAL LIABILITIES ATTACHING TO CHARTERER IN CASE OF SHIP LOADING "IN OCTOBER"—ACTUAL ARRIVAL OF SHIP AT LOADING PORT IN NOVEMBER—ELECTION BY CHARTERER NOT TO CANCEL—WHETHER BOUND BY SPECIAL LIABILITIES.

Special case stated by an arbitrator.

The appellants were the owners of a steamer called the "Maisol," which was chartered in 1935 to go to the White Sea to load a cargo of timber for carriage to London. The "Maisol" was described as "now trading, expected ready to load end September or early October." The charterers had the right to cancel the charter if the vessel did not begin loading by the middle of October. Before going to the loading port, she underwent repairs, and did not arrive at the loading port until the 6th November. The charterers did not elect to cancel. Clause 6 of the charter-party provided: "In the case of a vessel loading in October the charterers undertake to load vessel, clear the cargo, and present the master with bills of lading for signature in time to enable the pilot to take the vessel out of the port not later than October 31, failing which charterers shall pay to the shipowners the actual amount paid to the underwriters for extra insurance on current policies, excepting in case of delay attributable to the fault of the shipowners, the shipowners crediting any rebate from the underwriters as and when received." The umpire found, first, that the "Maisol" was not a vessel loading in October, within the meaning of cl. 6; and, secondly, that the delay was not attributable to the fault of the shipowners.

GODDARD, J., said that the important point was what was the meaning of "a vessel loading in October," for, if the shipowners failed on that point, the other question did not arise, and the authorities need not be considered. The charter contemplated that the vessel would be at the loading port "about end September or beginning October," and she did not in fact arrive until November. Clause 6 laid a substantial burden on the charterers—the payment of the extra insurance, but they only agreed to accept this in the case of a vessel loading in October. In his view, those words must be construed as meaning exactly what they said. The steamer did not in fact load in October, and the liability of the charterers, therefore, never arose. The second question need not be considered, and the award must be upheld.

COUNSEL: *H. M. Pratt*, for the appellants; *H. G. Willmer*, for the respondents.

SOLICITORS: *Sinclair, Roche & Temperley; Constant and Constant.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Bailey and Another *v.* Howard.

Charles, J. 9th May, 1938.

PRACTICE—LOSS OF EXPECTATION OF LIFE—DAMAGES—ASSESSMENT—OBSERVATIONS OF COURT.

Action tried by Charles, J., with a jury.

The plaintiff's two infant daughters were in a perambulator outside the gate of their house, when the defendant's car came into collision with it. The perambulator was swept into the garden, and the younger girl, aged three, died from her injuries on the following day. The elder girl, aged four, suffered from shock and abrasions. The defendant having admitted liability, the only question for the jury was the amount of damages.

CHARLES, J., summing up, said that it might be thought that that form of action by the administrator in respect of a person's death was somewhat unfortunate: but it was nevertheless one which the law allowed. The father was entitled to bring it as a lawful and proper action. It was really a pounds, shillings and pence action. Parliament had given the jury the duty of solving a problem which it was impossible accurately to determine. Those sitting in his (his lordship's) position realised the impossibility of it. One judge might give £5 and another £10,000; there was no guide; it was sheer guesswork. A child of three might die when it was four, or might live to attain the age of seventy. The jury were asked to do something by the death of the child which was concealed from the face of man. A doctor had told them that at three years of age a child had the highest expectation of life. Parliament had put on them the duty of looking into the unknown, and they must make a pure guess at what the expectation of life was, and how the child was going to grow up had it lived. The jury having awarded the plaintiff £350 in respect of the injuries to the elder girl, and £1,000 in respect of the loss of life of the younger, his lordship, entering judgment accordingly, said that he thought the damages excessive. If he had tried the case himself, he would have assessed them at £150. Although it was for the jury to endeavour to assess the impossible, he thought that the amount of £210 paid into court was ample with regard to the younger child's death, and that the damages in the case of the elder child were too great. He would grant a stay of execution with a view to appeal, which would possibly bring the matter to a head. It had to come to a head some time.

COUNSEL: *Russell Vick*, K.C., and *Eric O'Donnell*, for the plaintiff; *R. T. Monier-Williams*, for the defendant.

SOLICITORS: *Rider, Heaton, Meredith and Mills; Clifford-Turner & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

East Midland Area Traffic Commissioners *v.* Tyler.

Branson, Humphreys and du Parcq, JJ.
17th May, 1938.

ROAD TRAFFIC—PRIVATE MOTOR CAR—EXPRESS CARRIAGE—AGREEMENT BETWEEN OWNER OF CAR AND THREE PASSENGERS FOR DAILY JOURNEY TO AND FROM COMMON PLACE OF WORK—WEEKLY CONTRIBUTIONS TO RUNNING EXPENSES—WHETHER PUBLIC SERVICE LICENCE NECESSARY—ROAD TRAFFIC ACT, 1930 (20 & 21 Geo. 5, c. 43), s. 61 (1) (*b*) (2).

Appeal by case stated for a decision of Louth (Lincolnshire) justices.

Informations were preferred by the appellant commissioners against the respondent, Tyler, charging him respectively (*a*) with having caused a motor vehicle to be used on a public road, he not being the holder of a public service vehicle licence, contrary to s. 67 (1) and (3) of the Road Traffic Act, 1930, and (*b*) with having so caused, without being the holder of a road service licence, contrary to s. 72 (1) and (10). At the hearing of the informations, the following facts were proved or admitted: The car was a Morris Minor private car capable of seating four persons. On the day in question, it was being driven by the respondent, who was the owner. There were three other persons in the car, friends of the respondent, and all four were working on the site of the building of a new aerodrome. Each morning they went together in the car from Mablethorpe to Manby, a distance of 10 miles, and they returned home together each evening. It was agreed between them that they should share in the

running expenses of petrol and oil. All four men lived at Mablethorpe owing to lack of accommodation at or near the aerodrome, and were obliged to travel daily to their work there. For some time they travelled by a public service omnibus in circumstances of overcrowding and discomfort, until the respondent suggested to the other three men that, if they cared to share in the running expenses, the four of them could travel daily to and from their work in his car. No one except the respondent and those three men used the car for such journeys to and from his work. The payments for petrol and oil were shown to be at the rate of 5s. a week for each of the men, including the respondent as owner, having previously been at the rate of 3s. The respondent told the other three men each week how much petrol and oil had been used. The four men worked at the aerodrome for six days each week. It was contended for the appellants that the car was an express carriage as defined by s. 61 (*b*) of the Act of 1930, and that it was carrying passengers to a given place for hire or reward at separate fares. It was contended for the respondent that the arrangement was a mutual one which might cease any day; that the sum paid by each man was insufficient to justify a charge under s. 61; that the respondent was not plying for hire, but merely running the car for the convenience of himself and his three friends under an arrangement which he could stop whenever he wished; and that the Act was not intended to apply to such a case as the present. The justices dismissed the informations.

BRANSON, J., said that, dealing with s. 61 at large, it was sufficient to say that the precise point on which the case turned was whether it was correct to say that these three people, who drove with the respondent in his car, were carried in a motor vehicle for a journey in consideration of separate payments made by them within the words of s. 61 (2) of the Act of 1930, or whether the contention of the respondent was correct that the payments which the case found to have been made by the three persons in the car with the respondent could not be said to be payments made in respect of any journey by the car, but only payments made in respect of so many gallons of petrol or pints of oil, and such and such a proportion of the cost of the licence and insurance. On the facts as found, it was beyond argument that the three men who were not the owners were being carried daily to their work by this car in consideration of separate payments, at first of 3s., and later of 5s., a week. If that were so, then, under s. 61 (2), the vehicle in which they were carried must "be deemed to be a vehicle carrying passengers for hire or reward at separate fares." It was argued for the respondent that the payments were not made in respect of the journey at all. It was, however, impossible to say that those payments were not made in consideration of the carriage of those three men backwards and forwards between the place where they lived and that where they worked. Section 61 (2) was decisive of the case, and the appeal must be allowed, although it was impossible not to sympathise with the respondent.

HUMPHREYS and DU PARCQ, JJ., agreed.

COUNSEL: *Valentine Holmes*, for the appellants; *M. A. B. King-Hamilton*, for the respondent.

SOLICITORS: *The Treasury Solicitor; Amery-Parkes & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Thompson (otherwise Hulton) *v.* Thompson (Causton Intervening).

Langton, J. 31st March and 5th April.

DIVORCE — HUSBAND'S ADULTERY — CERTIFICATES OF VIRGINITY—DECREE *Nisi*—KING'S PROCTOR'S ARGUMENT—HEAVY ONUS ON PETITIONER—DECREE MAINTAINED—KING'S PROCTOR TO PAY PROPORTION OF COSTS.

This was a wife's petition for dissolution of marriage on the ground of the husband's adultery with the woman named, Miss Causton, who intervened.

The respondent and intervener filed answers denying the charges. Pending suit the petitioner's solicitors were supplied with copies of certificates of gynæcologists to the effect that the intervener was *virgo intacta*. The intervener subsequently refused to submit to examination by a gynæcologist nominated on behalf of the petitioner. Before the hearing there was an intimation that the suit would be no longer contested. In the result, on 9th July, 1937, Langton, J., granted the petitioner a decree *nisi*, but directed that the papers be sent to the King's Proctor for inquiry with the special object of discovering what were the true facts concerning the intervener's alleged two visits to doctors. The King's Proctor presented a plea alleging that the respondent and intervener had not committed adultery and that at all material times the intervener was *virgo intacta*. The petitioner joined issue thereon and at the subsequent hearing adduced fresh evidence in support of the charges of adultery.

LANGTON, J., in the course of delivering a considered judgment, said, after reviewing the evidence, that he found as a fact that the intervener was the woman who had been examined by the doctors. It had been conceded that the intervener's condition, though not conclusive on the question of adultery, made the petitioner's burden of proof very considerably heavier, and therefore, he, his lordship, had admitted fresh evidence. The matter had been dealt with in *Chalmers* v. *Chalmers* (*Threlfall intervening*) [1930] P. 154; 74 SOL. J. 216. No one contended nowadays that the fact that a woman accused of adultery was found to be *virgo intacta* was inconsistent with partial intercourse sufficient to sustain a charge of adultery. A medical certificate to such an effect was in no way conclusive. His lordship referred to *Jolly* v. *Jolly and Fryers* (1919), 63 SOL. J. 777; *Harry* v. *Harry* (1919), *The Times*, 4th and 5th April, and *Rutherford* v. *Richardson* [1923] A.C. 1, at p. 11 (Lord Birkenhead's speech). The court, however, should be slow to draw an adverse inference against a lady so strongly protected. But in spite of the strong presumption in the intervener's favour he, his lordship, could not escape the inference arising from the fact that the respondent and intervener, who were admittedly on terms of great affection, had certainly slept together in the same room at Peppard, and almost certainly slept together in the same bed in London, and had been at great pains to deceive both the world and the court as to their behaviour. He found that there had been mutual intercourse amounting in law to adultery. Therefore the decree *nisi* already pronounced would stand. His lordship subsequently heard arguments on the question of the petitioner's costs of the intervention and in giving judgment said that the problem of costs was a very difficult problem for solution. He had deliberated upon it very carefully, and, as in most questions concerning costs, probably the fewer reasons that were given, the better would be the decision. The case which was brought to his attention, *Higgins* v. *King's Proctor*; *King's Proctor* v. *Carter* [1910] P. 151, established of course, quite clearly that the King's Proctor was in the same position, and on the same footing, as those of any ordinary litigant. He should have the advantages as well as the disadvantages of that position. It was one of those cases in which it was impossible to escape inflicting a hardship upon one side or the other. It seemed to him, his lordship, that there was more hardship in putting the whole of this expense upon the petitioner than there would be in putting it upon the King's Proctor. Without, therefore, suggesting in any way—he did not wish to suggest it—that the King's Proctor had done anything except the whole of his duties, and had done it at the instigation of the court, he thought that the justice of this case would be met by the King's Proctor paying three-quarters of the taxed costs of the petitioner of the intervention.

Leave to appeal as to costs was granted.

COUNSEL: *The Solicitor-General* (Sir Terence O'Connor, K.C.) and *H. W. Barnard*, for the King's Proctor; *Roland Oliver*, K.C., and *R. Bush James*, for the petitioner.

SOLICITORS: *Treasury Solicitor*, for the King's Proctor; *Withers & Co.*, for the petitioner.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Obituary.

MR. A. H. BAILEY.

Mr. Archibald Henry Bailey, solicitor, of Tonbridge, died at a nursing home in Winchester on Monday, 9th May, in his sixty-fourth year. He was educated at Marlborough, and afterwards articled to Messrs. Scotney & Shenton, solicitors, of Winchester. He was admitted a solicitor in 1904 and joined the firm of Messrs. Palmer & Wardley, at Tonbridge. In 1909 he commenced practice there on his own account, and later took into partnership Mr. Henry Cogger.

MR. G. A. COOKE-YARBOROUGH.

Mr. George Eustace Cooke-Yarborough, of Doncaster, died on Thursday, 12th May, aged sixty-two. He was called to the Bar by the Inner Temple in 1901. He was educated at Charterhouse and Magdalen College, Oxford, and practised for fifteen years on the North-Eastern Circuit before taking up public work.

MR. C. NELSON.

Mr. Cyril Nelson, solicitor, a member of the firm of Messrs. Nelson & Jackson, of Lincoln, died on Friday, 13th May, in his sixty-ninth year. Mr. Nelson was educated at Haileybury College, and admitted a solicitor in 1892. He served as Sheriff of Lincoln in 1913.

MR. A. E. PHIPPS.

Mr. Albert Edward Phipps, solicitor, of Northampton, died on Tuesday, 10th May, at the age of seventy-five. Mr. Phipps, who was a partner in the firm of Messrs. Phipps and Troup, was admitted a solicitor in 1886.

MR. T. P. ROGERS.

Mr. Tom Percival Rogers, solicitor, a member of the firm of Messrs. Lyndon Moore & Co., of Newport, Mon., died on Sunday, 8th May, at the age of fifty-two. He was admitted a solicitor in 1922, and was a member of the Monmouthshire Incorporated Law Society. For many years he was Deputy Coroner for Newport.

MR. G. P. SYMES.

Mr. Gustavus Phelps Symes, solicitor, of Weymouth, died recently at the age of eighty-one. Mr. Symes was admitted a solicitor in 1883, and his offices included those of Coroner for South Dorset and Clerk to the Weymouth Justices.

MR. H. C. TEEK.

Mr. Henry Comer Teek, solicitor, of Cheddar and Axbridge, died on Friday, 13th May. Mr. Teek was educated at Felstead College, Cambridge, and admitted a solicitor in 1898. He was Chairman of the Cheddar Parish Council for twenty-two years, and one of the three local representatives of the National Trust responsible for the preservation of natural beauty spots at Cheddar.

MR. R. J. WINTERBOTHAM.

Mr. Reginald John Winterbotham, solicitor, senior partner in the firm of Messrs. Winterbotham, Gurney & Co., of Cheltenham, died on Wednesday, 11th May, at the age of sixty-five. Mr. Winterbotham, who was educated at Clifton and Oxford, was admitted a solicitor in 1898.

Parliamentary News.

Progress of Bills.

House of Lords.

Architects Registration Bill.
Read First Time. [16th May.

Baking Industry (Hours of Work) Bill.
Read First Time. [16th May.

Blackpool Improvement Bill.
Read Third Time. [17th May.

Bradford Extension Bill.
Read Second Time. [17th May.

Brixham Gas and Electricity Bill.
Read Second Time. [17th May.

Clacton Urban District Council Bill.
Read Second Time. [17th May.

Crewe Corporation Bill.
Read Second Time. [17th May.

Eire (Confirmation of Agreements) Bill.
Read Third Time. [17th May.

Forfar Corporation Water Order Confirmation Bill.
Read Third Time. [18th May.

Funeral Directors (Registration) Bill.
Read First Time. [16th May.

Guildford Corporation Bill.
Read Second Time. [17th May.

Harwich Harbour Bill.
Committed. [17th May.

Housing (Agricultural Population) (Scotland) Bill.
Reported, without Amendment. [17th May.

Increase of Rent and Mortgage Interest (Restrictions) Bill.
Reported, with Amendment. [17th May.

Irvine and District Water Board Order Confirmation Bill.
Read Third Time. [18th May.

Irwell Valley Water Board Bill.
Read Second Time. [17th May.

London Midland and Scottish Railway Bill.
Read Second Time. [17th May.

London Passenger Transport Board Bill.
Read First Time. [16th May.

Ministry of Health Provisional Order (Bridgwater Extension) Bill.
Read Third Time. [12th May.

Ministry of Health Provisional Order (Keighley) Bill.
Read First Time. [16th May.

Nottingham Corporation Bill.
Read Third Time. [17th May.

Poor's Allotment in Hanwell Bill.
Read Second Time. [16th May.

Post Office (Sites) Bill.
Read First Time. [12th May.

Registration of Still-Births (Scotland) Bill.
Read First Time. [16th May.

Romford Gas Bill.
Read Second Time. [17th May.

Scottish Land Court Bill.
Read Second Time. [17th May.

Sea Fish Industry Bill.
In Committee. [17th May.

Shropshire, Worcestershire and Staffordshire Electric Power (Consolidation) Bill.
Reported, with Amendments. [11th May.

Stockton-on-Tees Corporation Bill.
Read Third Time. [17th May.

Swinton and Pendlebury Corporation Bill.
Read Second Time. [17th May.

Wear Navigation and Sunderland Dock Bill.
Read Third Time. [17th May.

West Thurrock Estate Bill.
Read Third Time. [17th May.

Workmen's Compensation (Amendment) Bill.
Read Second Time. [18th May.

House of Commons.

Air Navigation (Financial Provisions) Bill.
Read Second Time. [18th May.

Architects Registration Bill.
Read Third Time. [13th May.

Baking Industry (Hours of Work) Bill (changed from "Bakehouses Bill").
Read Third Time. [13th May.

Betting and Bookmakers Bill.
House Counted out on Second Reading. [13th May.

Criminal Procedure (Scotland) Bill.
Reported, with Amendments. [12th May.

Evidence Bill.
Read Second Time. [16th May.
Housing (Rural Workers) Amendment Bill.
Reported, with Amendment. [16th May.
Imperial Telegraphs Bill.
Read First Time. [12th May.
Lee Conservancy Bill.
Reported, with Amendments. [12th May.
Local Government (Hours of Poll) Bill.
Read Second Time. [17th May.
London and North Eastern Railway Bill.
Reported with Amendments. [12th May.
London County Council (Tunnel and Improvements) Bill.
Reported, with Amendments. [12th May.
London County Council (Money) Bill.
Read Second Time. [16th May.
London Passenger Transport Board Bill.
Read Third Time. [13th May.
Ministry of Health Provisional Order (Bridgwater Extension) Bill.
Lords Amendments agreed to. [13th May.
Ministry of Health Provisional Order (Colne Water) Bill.
Read First Time. [17th May.
Ministry of Health Provisional Order (Cholderton and District Water) Bill.
Read First Time. [17th May.
Ministry of Health Provisional Order (Torquay) Bill.
Read First Time. [17th May.
Ministry of Health Provisional Order (Keighley) Bill.
Read Third Time. [13th May.
Newcastle and Gateshead Waterworks Bill.
Reported with Amendments. [12th May.
Registration of Still Births (Scotland) Bill.
Read Third Time. [13th May.
Southern Railway Bill.
Reported, with Amendments. [12th May.
Welsh Church (Amendment) Bill.
Read Second Time. [16th May.
West Surrey Water Bill.
Reported, with Amendments. [12th May.

Questions to Ministers.

SOLICITORS (PROSECUTIONS FOR FRAUD).

Mr. LIDDALL asked the Attorney-General whether he will introduce legislation to provide that Government auditors, similar to those who audit the accounts of local authorities, shall audit the professional accounts of solicitors every six months, in view of the experience that the regulations under the Solicitors Act, after having had five years of trial have failed to protect clients' property against fraudulent conversion, as disclosed recently in the criminal courts.

THE ATTORNEY-GENERAL: I would refer the hon. Member to the answer made to his previous question on Wednesday, 4th May, 1938, to which I have nothing to add, except to remind him that the Solicitors' Accounts Rules made under the Solicitors Act, 1933, did not come into operation until the 1st January, 1935, and consequently that they have not been in force for five years as stated. The Law Society have reason to believe that the rules have been of use though further steps are under consideration. [18th May.

Societies.

The Barristers' Benevolent Association.

The Annual General Meeting will be held in the Inner Temple Hall on Tuesday, the 24th May, at 4.30 p.m. The Hon. Mr. Justice Goddard has kindly promised to preside. All members of the Inns of Court, whether subscribers to the Association's funds or not are cordially invited to attend. The committee wish it to be known that the Association is urgently in need of further support. Members of the Bar who do not already subscribe will, if they attend the meeting, learn of the valuable work of the Association in relieving cases of distress in the profession, and of its pressing need for augmented resources. They are asked to make a note of the date, time and place, and to come if they possibly can. An opportunity will be afforded to members and others attending the meeting to raise for discussion any questions relating to the work or administration of the Association. The annual report will be circulated, before the meeting, to every member of the Bar with an address in the Law List. The following twenty members of the Association are eligible and willing to serve on the committee of management for the ensuing year as ordinary members thereof, and will be proposed for election at the meeting: A. F. Topham, K.C., J. D. Cassels, K.C., Trevor Hunter, K.C., Lionel L. Cohen, K.C., J. G. Trapnell, K.C., D. Maxwell Fyfe, K.C., M.P., P. E. Sandlands, K.C., W. N. Stable, K.C., G. Russell Vick, K.C., A. M. Trustram Eve, K.C., H. U. Willink, K.C., H. Wynn Parry, K.C., W. E. Vernon, E. A. Godson, H. E. Salt, L. M. Jopling, E. Holroyd Pearce, Sir John Cameron, Bt., the Hon. B. Bathurst and R. E. Manningham-Buller. Subscriptions and donations should be sent to the Association at 5 Crown Office Row, Temple, E.C.4.

The Union Society of London.

A meeting of the Society was held at the Middle Temple Common Room, on Wednesday, the 11th May, the president (Mr. D. W. Dobson) being in the chair. The hon. treasurer (Mr. H. Moses) proposed the motion: "That this House deplores the totalitarian tendencies of the National Government." Mr. Melville Buckland opposed and Mr. D. F. Brundrit, Mr. W. R. Starkey, Mr. Kenneth Ingram, Mr. P. A. Picarde, Mr. A. D. Russell-Clarke, Mr. A. F. Stopford-Adams, the hon. secretary (Mr. M. I. Mail) and Mr. J. H. Oldham also spoke. Mr. Moses replied. Upon division the motion was lost by three votes.

A meeting of the Society was held at the Middle Temple Common Room, on Wednesday, the 18th May, the President (Mr. D. W. Dobson) being in the chair. Mr. D. F. Brundrit proposed the motion: "That State control of working-class tenancies should be permanent." Mr. J. M. Symmons opposed, and the Hon. Treasurer (Mr. H. Moses), Mr. C. R. Hurle-Hobbs, Mr. A. D. Russell-Clarke, Mr. Melville Buckland and Mr. W. R. Starkey also spoke. Mr. Brundrit replied. Upon division the motion was carried by six votes.

Law Students' Debating Society.

At a meeting of the Society, held at The Law Society's Court Room, on Tuesday, 3rd May (Chairman, Mr. G. Russo), the subject for debate was: "That this House deplores the Budget." Mr. J. M. Shaw opened in the affirmative. Mr. R. J. Temple opened in the negative. The following members also spoke: Messrs. K. Elphinstone, F. D. Kennedy, L. E. Long, E. V. E. White, R. G. Roberts, M. C. Batten, R. H. North Lewis, H. Schadtler, J. A. Dowding, H. F. MacMaster, and H. Foakes. The opener having replied, the motion was lost by one vote. There were twenty-four members and two visitors present.

At a meeting of the Society held at The Law Society's Court Room, on Tuesday, 10th May (Chairman, Mr. B. W. Main), officers for the session 1938–39 were elected as follows: Auditors: Mr. P. W. Iliff, Mr. G. Roberts; Treasurer: Mr. P. H. North Lewis; Secretaries: Mr. M. Foulis, Mr. J. B. Latey; Reporter: Mr. G. Russo; Committee: Mr. M. C. Green, Mr. Q. B. Hurst, Mr. B. W. Main, Mr. E. V. E. White. There were twenty-six members present.

Legal Notes and News.

Honours and Appointments.

Mr. KING MURRAY, K.C., who has been appointed chairman of the Scottish Land Court at Edinburgh in succession to the late Lord Macgregor Mitchell, has assumed the judicial title of Lord Murray. On Tuesday last he attended before the Lord President, Lord Normand, in Chambers at Parliament House, Edinburgh, and took the Oath of Allegiance and the Judicial Oath on his appointment.

Mr. J. M. TUCKER, K.C., and Mr. WILLIAM GORMAN, K.C., have been elected Masters of the Bench of the Honourable Society of the Middle Temple.

Mr. B. R. OSTLER, M.A., who was articled to Mr. R. H. Jerman, Town Clerk of Wandsworth, has been appointed Assistant Solicitor at Weston-super-Mare, at a salary of £300 a year. Mr. Ostler was admitted a solicitor in 1937.

Professional Announcements.

(2s. per line.)

Messrs. C. H. SAUNDERS and J. H. BREAKWELL, who have for many years practised as SAUNDERS & BREAKWELL and MOORE BAYLEY & Co., at 37, Temple Row, Birmingham 2, have retired from practice as from the 2nd of May. The practice of Messrs. Saunders & Breakwell has been acquired, and will be continued at 37, Temple Row, Birmingham, by

Messrs. H. W. Lyde, J.P., J. W. Jessop, M.A., and E. H. Lyde. Messrs. H. W. Lyde and E. H. Lyde will continue to practise as G. T. Smith & Lyde at 124, Edmund Street, Birmingham, and Mr. J. W. Jessop will likewise continue to practise at 124, Edmund Street under his own name, independently of the practice of Saunders & Breakwell.

John Hodge & Co., of 27 and 29, Boulevard, Weston-super-Mare, announce that they have acquired the goodwill of the practice (but have not taken over the book debts or liabilities) of Messrs. Baker & Co., of 19, Waterloo Street, Weston-super-Mare, and will continue to practise at both addresses as John Hodge, Baker & Co. They have taken into partnership Erskine Pollock and H. J. Charlton, who have been associated with them for many years.

Wills and Bequests.

Mr. Newton Graeme Driver, solicitor, of Talbot Square, W., and of Gray's Inn, W.C., left £66,815 with net personalty £66,007.

Major Thomas Bernard Heslop, D.S.O., late 6th Battalion, The Durham Light Infantry, of Startforth, North Riding, Yorks, solicitor, left £18,166, with net personalty £13,334.

Mr. John Thomas Jones, retired solicitor, of Llanishen, Cardiff, left £75,388, with net personalty £64,035.

Mr. Walter Richard Joseph Law, solicitor, of Brackley, Northants, left £53,718, with net personalty £52,102.

Mr. Frederick Albert Wood (75), of St. Andrew's Hill, E.C., of Croydon, and of Herne Bay, solicitor, left £100,249, with net personalty £58,113. He stated: "I am considerably indebted to the clerks of my late firm—they have one and all served me and my partners with industry and the strictest honesty, and I do not think that many solicitors can claim to have had a more loyal staff."

Notes.

Mr. A. S. Rogers has been elected president, and Mr. Alexander MacDonald deputy president, of the Insurance Institute of London.

The Court of the University of Leeds has decided to confer the honorary degree of Doctor of Laws on the Prime Minister, Mr. Neville Chamberlain, at a degree ceremony in July. A similar degree will be conferred on the Hon. Rupert E. Beckett, chairman of the Westminster Bank, who is Hon. Treasurer of the University.

Court Papers.

Supreme Court of Judicature.

Date.	Emergency Rota.	Appeal Court No. 1.	Group II. Mr. Justice Luxmoore. Non-Witness	Mr. Justice Farwell. Witness Part II
	Mr.	Mr.	Mr.	Mr.
May 23	Jones	More	Ritchie	*Jones
„ 24	Ritchie	Hicks Beach	Blaker	*Ritchie
„ 25	Blaker	Andrews	More	*Blaker
„ 26	More	Jones	Hicks Beach	*More
„ 27	Hicks Beach	Ritchie	Andrews	*Hicks Beach
„ 28	Andrews	Blaker	Jones	Andrews

Date.	Group II. Mr. Justice Morton. Witness Part I.	Mr. Justice Bennett. Non-Witness	Group I. Mr. Justice Crossman. Witness Part I.	Mr. Justice Simonds. Witness Part II.
	Mr.	Mr.	Mr.	Mr.
„ 23	*Andrews	Hicks Beach	*Blaker	More
„ 24	*Jones	Andrews	*More	Hicks Beach
„ 25	*Ritchie	Jones	*Hicks Beach	Andrews
„ 26	Blaker	Ritchie	*Andrews	Jones
„ 27	More	Blaker	*Jones	Ritchie
„ 28	Hicks Beach	More	Ritchie	Blaker

*The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 26th May 1938.

	Div. Months.	Middle Price 18 May 1938.	Flat Interest Yield. £ s. d.	‡ Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	110¾	3 12 3	3 4 8
Consols 2½%	JAJO	74½	3 7 1	—
War Loan 3½% 1952 or after ...	JD	101½	3 9 3	3 8 2
Funding 4% Loan 1960-90	MN	113	3 10 10	3 3 4
Funding 3% Loan 1959-69	AO	98	3 1 3	3 2 0
Funding 2¾% Loan 1952-57	JD	96½xd	2 17 2	3 0 2
Funding 2½% Loan 1956-61	AO	90¾	2 15 1	3 1 3
Victory 4% Loan Av. life 22 years ...	MS	111	3 12 1	3 5 9
Conversion 5% Loan 1944-64 ...	MN	113	4 8 6	2 8 6
Conversion 4½% Loan 1940-44 ..	JJ	106½	4 4 6	1 18 1
Conversion 3½% Loan 1961 or after	AO	101½	3 9 0	3 8 1
Conversion 3% Loan 1948-53 ...	MS	102	2 18 10	2 15 1
Conversion 2½% Loan 1944-49 ...	AO	99½	2 10 3	2 11 0
Local Loans 3% Stock 1912 or after	JAJO	87½	3 8 7	—
Bank Stock	AO	338	3 11 0	—
Guaranteed 2½% Stock (Irish Land Act) 1933 or after	JJ	82	3 7 1	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	88½	3 7 10	—
India 4½% 1950-55	MN	112½	4 0 0	3 4 6
India 3½% 1931 or after	JAJO	92½	3 15 8	—
India 3% 1948 or after	JAJO	79½	3 15 6	—
Sudan 4½% 1939-73 Av. life 27 years	FA	109½	4 2 2	3 18 5
Sudan 4% 1974 Red. in part after 1950	MN	107½	3 14 5	3 4 9
Tanganyika 4% Guaranteed 1951-71	FA	109	3 13 5	3 2 11
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	106½	4 4 6	2 10 0
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	92	2 14 4	3 1 9
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	104	3 16 11	3 13 7
Australia (Commonw'th) 3% 1955-58	AO	88	3 8 2	3 17 6
*Canada 4% 1953-58	MS	109	3 13 5	3 4 7
*Natal 3% 1929-49	JJ	101	2 19 5	—
New South Wales 3½% 1930-50 ...	JJ	97	3 12 2	3 16 4
New Zealand 3% 1945	AO	91	3 5 11	4 10 7
Nigeria 4% 1963	AO	108	3 14 1	3 10 3
Queensland 3½% 1950-70	JJ	97	3 12 2	3 13 2
*South Africa 3½% 1953-73	JD	102	3 8 8	3 6 7
Victoria 3½% 1929-49	AO	97	3 12 2	3 16 10
CORPORATION STOCKS				
Birmingham 3% 1947 or after ...	JJ	86½	3 9 4	—
Croydon 3% 1940-60	AO	95	3 3 2	3 6 6
*Essex County 3½% 1952-72 ...	JD	103	3 8 0	3 4 10
Leeds 3% 1927 or after	JJ	86	3 9 9	—
Liverpool 3½% Redeemable by agreement with holders or by purchase...	JAJO	100	3 10 0	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	71½	3 9 11	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	85½	3 10 2	—
Manchester 3% 1941 or after ...	FA	86	3 9 9	—
Metropolitan Consd. 2½% 1920-49 ...	MJSD	97½	2 11 3	2 15 3
Metropolitan Water Board 3% "A" 1963-2003	AO	87½	3 8 7	3 9 9
Do. do. 3% "B" 1934-2003 ...	MS	89	3 7 5	3 8 5
Do. do. 3% "E" 1953-73 ...	JJ	97	3 1 10	3 2 10
*Middlesex County Council 4% 1952-72	MN	107	3 14 9	3 7 3
* Do. do. 4½% 1950-70	MN	111	4 1 1	3 7 5
Nottingham 3% Irredeemable ...	MN	86	3 9 9	—
Sheffield Corp. 3½% 1968	JJ	103	3 8 0	3 6 10
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture ...	JJ	109	3 13 5	—
Gt. Western Rly. 4½% Debenture ...	JJ	117½	3 16 7	—
Gt. Western Rly. 5% Debenture ...	JJ	129½	3 17 3	—
Gt. Western Rly. 5% Rent Charge ...	FA	127½	3 18 5	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	127½	3 18 5	—
Gt. Western Rly. 5% Preference ...	MA	115½	4 6 7	—
Southern Rly. 4% Debenture ...	JJ	107	3 14 9	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	108½	3 13 9	3 9 5
Southern Rly. 5% Guaranteed ...	MA	126½	3 19 1	—
Southern Rly. 5% Preference ...	MA	112½	4 8 11	—

* Not available to Trustees over par.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.